

TEXT OF PROPOSED THIRD AMENDMENT TO THE
AGREEMENT FOR COOPERATION BETWEEN THE
UNITED STATES OF AMERICA AND THE INTER-
NATIONAL ATOMIC ENERGY AGENCY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

TEXT OF PROPOSED THIRD AMENDMENT TO THE AGREEMENT
FOR COOPERATION BETWEEN THE UNITED STATES OF AMERICA
AND THE INTERNATIONAL ATOMIC ENERGY AGENCY



JANUARY 29, 2014.—Message and accompanying papers referred to the
Committee on Foreign Affairs and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) (the "Act"), the text of a proposed Third Amendment to the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency (IAEA) (the "Amendment"). I am also pleased to transmit my written approval, authorization, and determination concerning the Amendment, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Amendment. (In accordance with section 123 of the Act, as amended by title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105-277), a classified annex to the NPAS, prepared by the Secretary of State in consultation with the Director of National Intelligence, summarizing relevant classified information, will be submitted to the Congress separately.) The joint memorandum submitted to me by the Secretaries of State and Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed. An addendum to the NPAS pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1), as amended, is being submitted separately by the Director of National Intelligence.

The proposed Amendment has been negotiated in accordance with the Act and other applicable law. In my judgment, it meets all applicable statutory requirements and will advance the nonproliferation and other foreign policy interests of the United States.

Pursuant to the proposed Amendment, the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency, signed at Vienna May 11, 1959, as amended and extended February 12, 1974, and January 14, 1980 (the "Agreement"), would continue to provide a comprehensive framework for peaceful nuclear cooperation with the IAEA and facilitate our mutual objectives related to nonproliferation and the peaceful uses of nuclear energy. The primary purposes of the Agreement are to enable exports from the United States of nuclear material and equipment to IAEA Member States for research reactors and, in certain cases, for power reactors, and to enable transfers from the United States of small samples of nuclear material to the IAEA for safeguards and research purposes.

Under the proposed Amendment, the term of the Agreement will be extended an additional 40 years for a total term of 95 years.

The Agreement permits the transfer of material, equipment (including reactors), and facilities for nuclear research and nuclear power production. It does not permit transfers of Restricted Data, sensitive nuclear facilities, or major critical components of such facilities, or, unless specifically provided for in a supply agreement or an amendment thereto, transfers of sensitive nuclear technology.

In the event of termination of the Agreement, key nonproliferation conditions and controls continue with respect to material, equipment, and facilities subject to the Agreement.

A more detailed discussion of the IAEA's nuclear nonproliferation and peaceful uses activities is provided in the NPAS and in a classified annex to the NPAS submitted to you separately.

I have considered the views and recommendations of the interested agencies in reviewing the proposed Amendment to the Agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the Amendment and authorized its execution and urge that the Congress give it favorable consideration.

This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Act. My Administration is prepared to begin immediately the consultations with the Senate Foreign Relations Committee and the House Foreign Affairs Committee as provided in section 123 b. Upon completion of the 30 days of continuous session review provided for in section 123 b., the 60 days of continuous session review provided for in section 123 d. shall commence.

BARACK OBAMA.

THE WHITE HOUSE, *January 29, 2014.*

**THIRD AMENDMENT TO THE AGREEMENT FOR CO-OPERATION
BETWEEN THE UNITED STATES OF AMERICA AND THE
INTERNATIONAL ATOMIC ENERGY AGENCY**

The United States of America and the International Atomic Energy Agency,

Desiring to amend the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency, signed at Vienna on May 11, 1959, as amended (hereinafter referred to as the "Agreement for Co-operation"),

Agree as follows:

ARTICLE I

1. Article IV of the Agreement for Co-operation is amended by deleting the phrase "and the Appendix thereto" and the sentence "The Appendix may be modified by mutual consent of the Parties, without amendment of this Agreement."
2. The Annex to the Agreement for Co-operation is amended by:
 - a. deleting in Section F thereof the sentence "Prior to any such transfer the recipient Member State or group of Member States shall agree to the levels for the application of physical protection set forth in the Appendix to the Annex, and to the maintenance of adequate physical protection measures in accordance with such levels.";
 - b. deleting in Section F thereof the phrase "INFCIRC/225/Rev. 1, published by the Agency and entitled: "The Physical Protection of Nuclear Material"" and substituting in lieu thereof "IAEA Nuclear Security Series No. 13 published by the Agency and entitled "Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Revision 5)""; and
 - c. deleting the Appendix thereto.

ARTICLE II

Article VI of the Agreement for Co-operation is amended by deleting "fifty-five years" and substituting in lieu thereof "ninety-five years".

ARTICLE III

This Amendment shall enter into force on the date of the later note of an exchange of diplomatic notes between the Parties informing each other that they have complied with all requirements for entry into force.

IN WITNESS WHEREOF, the undersigned representatives have signed this Amendment pursuant to duly constituted authority.

DONE at Vienna, in duplicate, on this 21st day of January, 2014.

For the UNITED STATES OF
AMERICA:

For the INTERNATIONAL ATOMIC
ENERGY AGENCY:

[Handwritten signatures of representatives for the United States of America and the International Atomic Energy Agency]



Presidential Determination No. 2014-07

THE WHITE HOUSE,
Washington, January 17, 2014.

Memorandum for the Secretary of State, the Secretary of Energy.
Subject: Proposed Third Amendment to the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency.

I have considered the proposed Third Amendment to the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency, signed at Vienna on May 11, 1959, as amended and extended February 12, 1974, and January 14, 1980, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Third Amendment will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Third Amendment and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the *Federal Register*.

BARACK OBAMA.

NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

Pursuant to Section 123 a. of the Atomic Energy Act of 1954, as Amended, with Respect to the Proposed Third Amendment to the Agreement between the United States of America and the International Atomic Energy Agency

Introduction

This Nuclear Proliferation Assessment Statement (“NPAS”) relates to the proposed Third Amendment (the “Amendment”) to the Agreement for Cooperation between the United States of America and the International Atomic Energy Agency, signed at Vienna May 11, 1959, as amended February 12, 1974, and January 14, 1980 (the “Agreement”). Without a further amendment and extension, the Agreement would expire on August 7, 2014. The Amendment is being submitted to the President jointly by the Secretary of State and the Secretary of Energy for his approval.

Section 123 a. of the Atomic Energy Act, as amended (“the AEA”), provides that an NPAS be submitted by the Secretary of State to the President on each new or amended agreement for cooperation concluded pursuant to that section. Pursuant to section 123 a., the NPAS must analyze the consistency of the text of the proposed agreement with all the requirements of the AEA, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in that subsection. The NPAS must also address the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

With this statutory mandate in mind, this NPAS: (a) provides background information on the IAEA’s activities (Part I); (b) describes the existing Agreement and the proposed Amendment to the Agreement (Part II); (c) describes the compliance of the Agreement as amended by the proposed Amendment with statutory requirements (Part III); (d) details other policy issues (Part IV); and (e) sets forth the conclusions and recommendation of the Department of State as contemplated by section 123 a. of the AEA (Part V).

I. Background Information on the International Atomic Energy Agency

The International Atomic Energy Agency (“IAEA” or “Agency”) was established in 1957 by a multinational treaty (the Statute of the International Atomic Energy Agency¹) that grew out of President Eisenhower’s *Atoms for Peace* proposal in 1953. Headquartered in Vienna, Austria, it currently has 159 Member States. The United States, whose participation is based on its ratification of the Statute and on the IAEA Participation Act², has been a designated member of the Board of Governors (the Board) since its inception. The designated members of the Board are chosen annually from those members “most advanced in the technology of atomic energy.”³ The United States has always been a strong supporter of the IAEA and its mission, making the largest regular contribution to the IAEA’s annual budget as well as a significant yearly voluntary contribution.

According to Article II of its Statute, the IAEA seeks “. . . to accelerate and enlarge the contribution to atomic energy to peace, health and prosperity . . . [and] ensure . . . that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.” The IAEA’s dual responsibilities have been described as (1) providing scientific and technical assistance in the peaceful use of nuclear energy to Member States; and (2) implementing a safeguards system designed to guard against the diversion of material being used in peaceful nuclear programs to military or nuclear explosive use.

The IAEA plays a critical role in international nonproliferation efforts. All nuclear material and equipment provided to or through the IAEA is subject to the condition that it remain under IAEA safeguards, in accordance with the Agency’s Statute and relevant safeguards documents. The IAEA’s safeguards system has broad international support as a first line of defense against the misuse of nuclear material for military or explosive purposes. The Treaty on the Nonproliferation of Nuclear Weapons (“NPT”)⁴ provides for IAEA safeguards on all the peaceful nuclear activities of such states to verify that no diversion to nuclear weapons use is occurring. As of December 2013, 172 Member States have brought into force or acceded to a comprehensive safeguards agreement (CSA) with the IAEA, and 122 have brought into force or acceded to an Additional Protocol (AP) to their safeguards agreement. (The entry into force of a CSA and an AP is generally understood to be the global norm for safeguards.)

¹ 8 UST 1093, TIAS 3873.

² P.L. 85-177, 71 Stat. 453; 22 USC Section 2021, et. Seq.; 42 USC Section 2079.

³ IAEA Statute, Art. VI.A.1.

⁴ 21 UST 483, TIAS 6839.

In addition to its nonproliferation activities, the IAEA's other major objective is to assist Member States in utilizing the peaceful uses of nuclear energy, and striking a reasonable balance between the two missions is necessary to maintain the support of Member States for all of the IAEA's responsibilities, including its safeguards system. Article IV.2 of the NPT provides that "Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other states or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world." Many NPT parties consider Article IV the major quid pro quo for their acceptance of the NPT undertakings to forswear nuclear weapons acquisition and to accept full-scope safeguards.

Due to its statutory objectives and activities as directed by the Board of Governors, the IAEA does not constitute a proliferation threat. The IAEA has modest nuclear resources appropriate to its needs. It has no nuclear reactors but does possess small quantities of nuclear materials (primarily for safeguards samples and reference samples). It maintains a research laboratory in Seibersdorf, Austria, and conducts extensive theoretical studies and analytical laboratory work in many areas, including food irradiation, medical applications of isotopes, radiation technology, and water resources.

II. Description of the Existing Agreement and Proposed Amendment to the Agreement

A. Description of the Existing Agreement

On August 7, 1959, two years after the creation of the IAEA, the United States and the IAEA entered into the Agreement. The Agreement was amended in 1974 and again in 1980, first to extend its duration and to allow for the fueling of power reactors, and later to bring the Agreement into compliance with the Nuclear Nonproliferation Act of 1978.

Since its entry into force, the primary purpose of the Agreement has been to provide a legal foundation for the transfer of research reactor fuel and equipment from the United States to IAEA Member States that have not concluded an agreement for peaceful nuclear cooperation with the United States. The majority of supply

agreements⁵ concluded under the Agreement have been for this purpose, but a few others have been concluded to allow the United States to provide power reactors to two states under the Agreement (Mexico at Laguna Verde and Yugoslavia ((now Slovenia)) at Krsko).

In addition to transfers made via supply agreements with Member States, the United States has transferred small quantities of source and special nuclear material for both safeguards purposes and research applications. The most likely transfers to occur under the Agreement after entry into force of the proposed Amendment will be additional transfers of research reactor fuel and equipment to Member States and transfers of material to the IAEA for research and safeguards cooperation with the IAEA.

The procedure through which U.S.-obligated material and equipment are transferred through the IAEA under a supply agreement is typically as follows:

1. A Member State informs the IAEA of its interest in acquiring fuel and/or equipment from the United States;
2. After confirmation of U.S. interest in such a transaction, negotiations are begun on a supply agreement among the IAEA, the recipient and the United States (the scope of these agreements is usually limited to a particular transaction);
3. The IAEA Board of Governors approves the supply agreement; the United States and the recipient also approve the trilateral agreement; the agreement is signed; and
4. The necessary contractual arrangements are negotiated and U.S. Nuclear Regulatory Commission export license applied for and granted.

In addition to the nonproliferation requirements which must exist in all supply agreements as required by the Agreement, the United States also exchanges diplomatic notes, which constitute an agreed understanding, with each supply agreement recipient state containing additional nonproliferation assurances. In these notes, the United States and the recipient state agree, *inter alia*, to a system of

⁵ The Agreement refers to "supply agreements," but the IAEA Secretariat may also refer to supply agreements as "project and supply agreements." The two terms are often used interchangeably in current practice.

“fallback safeguards” if for some reason the IAEA is unable to undertake its safeguards responsibilities in the recipient state. The United States also reserves the right to be discharged of its obligations under the supply agreement and the right to require the return of the covered material under the supply agreement if certain conditions are not met. The United States can exercise these rights if the recipient state:

- a. does not comply with any provision of the supply agreement;
- b. does not accept safeguards as provided for by the Treaty on the Non-Proliferation of Nuclear Weapons (and in some cases where appropriate, also the Treaty of Tlatelolco);
- c. detonates a nuclear explosive device, terminates or abrogates IAEA safeguards, or terminates, abrogates, or materially violates an IAEA safeguards agreement;
- d. engages in, or assists, encourages, or induces any non-nuclear-weapon state to engage in activity involving source or special fissionable material and having direct significance for the manufacture of nuclear explosive devices; or
- e. enters into an agreement for the transfer of reprocessing equipment, materials, or technology to its sovereign control or to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which that the recipient state and the United States participate, or pursuant to any other relevant international agreement or undertaking to which such states subscribe.

The principal U.S. obligation under the Agreement is to make available to the Agency pursuant to the Agency Statute for use in Agency activities 5,000 kilograms of contained uranium-235 and will also, from time to time, make available to the Agency such additional quantities of special nuclear material, including contained uranium-235, as may be authorized by the United States. The uranium supplied may be enriched up to 20 per cent in the isotope uranium-235, provided that the parties may agree to a higher enrichment with respect to uranium to be used in research or material testing reactors or for research purposes.

Section 54a. of the AEA authorizes, subject to the provisions of AEA section 123, the Atomic Energy Commission (now the Department of Energy) to distribute to the Agency 5,000 kilograms of contained uranium-235, 500 grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear material made available by all other members of the Agency to June 1, 1960

(approximately 70 kilograms of contained uranium-235). Section 54a. also provides that notice of any written proposal by the Department of Energy to supply additional quantities needs to be given to Congress, and such export may not occur if within 60 days of continuous session of such notification, the Congress disapproves of the proposal by concurrent resolution. This section also authorized up to \$50,000 worth of special nuclear material to be made available to the Agency in each calendar year, without charge, to assist and encourage research in peaceful uses or for medical therapy.

The Atomic Energy Commission submitted a proposal to Congress to permit supply of an amount of contained uranium-235, in addition to that specifically permitted by section 54a., in an amount necessary to support the fuel cycle of power reactors in Mexico and Yugoslavia having a total installed capacity of 2,015 megawatts of nuclear energy. The NRC has informed us that, apart from the contained uranium-235 that has been supplied to those reactors, the total amounts of contained uranium-235, uranium-233, and plutonium supplied under the Agreement have not exceeded the statutory ceilings.

B. Description of the Proposed Amendment to the Agreement

The proposed Amendment extends the duration of the Agreement for an additional forty years, making the new expiration date August 7, 2054. Additionally, references in the Agreement to INFCIRC/225, the IAEA guidance document providing recommendations to Member States on appropriate physical protection standards, are updated by the Amendment to reflect the Board's 2011 adoption of the most recent version of the document to Revision 5.

On November 29, 2013, the Board of Governors considered the proposed Amendment. The United States introduced the amendment, explained its purposes and beneficial effects for IAEA Member States, and sought Board authorization for the IAEA Director General to sign the Amendment. A few states who have previously concluded supply agreements with the United States took the floor in support of the proposed Amendment, and no states made statements opposing the Amendment. The Board agreed by consensus to authorize the Director General to sign the Amendment on behalf of the IAEA.

III. Nature and Scope of Cooperation under the Proposed Amendment to the Agreement and Compliance with Statutory Requirements

The Agreement meets all applicable requirements of the AEA. Section 123(a) of the AEA requires agreements for cooperation to include the terms, conditions, duration, nature, and scope of the cooperation. The nature and scope of the cooperation authorized by the Agreement as amended by the proposed Amendment, as well as the types of cooperation excluded therefrom or permissible only by amendment thereto, are described in Section A below.

A. Nature and Scope of Cooperation under the Agreement and the Proposed Amendment to the Agreement

As noted above, the primary purpose of the Agreement as amended by the proposed Amendment will continue to be to provide a legal foundation for the establishment of supply agreements among the United States, the IAEA, and recipient state(s) to allow for the transfer of U.S.-obligated material and equipment. This will most commonly entail the transfer of research reactor fuel and equipment. The United States has previously transferred power reactor fuel and equipment via a supply agreement to two countries, but does not envision entering into supply agreements with additional countries for transfers of power reactors and/or fuel at this time. The United States may also utilize the Agreement as amended by the proposed Amendment to authorize the transfer of small quantities of source and special nuclear material to the IAEA for both safeguards purposes and research applications.

Section A of the Annex of the Agreement provides that cooperation thereunder through a supply agreement requires the application of IAEA safeguards with respect to all nuclear activities within the territory of a non-nuclear weapons state or group of Member States involved in any potential transfer.

Section G of the Annex of the Agreement excludes cooperation through a supply agreement involving the transfer of sensitive nuclear technology⁶, unless specifically provided in the supply agreement or an amendment thereto. (The Administration cannot foresee at this time a circumstance in which it would authorize the transfer of sensitive nuclear technology through a supply agreement or a future amendment thereto.)

⁶ Sensitive nuclear technology is defined in Section G as "any information (including information incorporated in equipment or facilities) which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium, or such other information as the United States may designate prior to transfer of the information."

B. Compliance of the Agreement as Amended by the Proposed Amendment with Statutory Requirements

U.S. law has added no new substantive requirements for agreements of this type since 1978. Moreover, the proposed Amendment makes no substantive change to the Agreement, except to extend its duration and update the physical protection provisions. As a result, there is no need to repeat in this NPAS the detailed analysis in the Nuclear Proliferation Assessment Statement prepared in 1979 by the Arms Control and Disarmament Agency (ACDA) in connection with the Second Amendment to the Agreement, which concluded that the Agreement as amended by the Second Amendment meets all of the substantive requirements in the AEA and the Nuclear Non-Proliferation Act of 1978 ("NNPA") for new or amended agreements for cooperation.

In light of the fact that there have not been changes or additions to the requirements specified in the NNPA for such agreements for cooperation, and that the proposed Amendment does not reduce the substantive undertakings by the IAEA contained in the Agreement, the Agreement as amended by the Amendment will continue to meet all the requirements of the AEA.

The primary purpose of the Amendment is to extend the duration of the Agreement, which will expire by its terms on August 7, 2014. The Amendment also updates the language in the Agreement regarding the guaranty that adequate physical protection will be applied to material and equipment subject to the Agreement. It also eliminates an Appendix to the Agreement that listed levels of physical protection, and replaced the reference to the minimum levels of physical protection applicable under the Agreement with a reference to the most recent guidelines published by the IAEA or any revision of those guidelines agreed to by the United States and the IAEA or the recipient Member State. These changes do not alter the substantive commitment of the IAEA or Member States who receive nuclear supply from the United States under a supply agreement pursuant to the Agreement to provide a guarantee of adequate physical protection over such U.S. supply.

III. Other Non-Proliferation Policy Issues

The Agreement is unique among the agreements for peaceful nuclear cooperation of the United States. Most of the transfers pursuant to this Agreement are and will be to recipient countries that are not specifically identified in the Agreement, since the potential recipients could include any IAEA Member State. Before such

transfers can take place, a supply agreement will be required that identifies the recipient, the end use, and the kinds and amounts of materials and equipment to be transferred. These supply agreements and any exports from the United States pursuant to them will be subject to all the nonproliferation conditions highlighted above before any export from the United States may occur, and a Nuclear Regulatory Commission license will also be required.

IV. Conclusions and Recommendation

Entry-into-force of the proposed Amendment will provide the legal authority to permit continuation of mutually beneficial peaceful nuclear cooperation between the United States and the IAEA and between the United States and other IAEA Member States.

On the basis of the analysis in this NPAS and pertinent information of which it is aware--including the provisions of the Agreement as amended by the proposed Amendment, the nature of the activities of the IAEA, and the strong history of cooperation between the United States and the IAEA with regard to nuclear nonproliferation--the Department of State has arrived at the following assessment, conclusions, views and recommendations:

1. The safeguards and other control mechanisms and the peaceful use assurances in the Agreement as amended by the proposed Amendment are adequate to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.
2. The Agreement as amended by the proposed Amendment meets all the legal requirements of the Act and the NNPA.
3. Execution of the proposed Amendment would be compatible with the non-proliferation program, policy, and objectives of the United States.
4. Therefore, it is recommended that the President approve and authorize the execution of the proposed Amendment; and that the President determine that the performance of the proposed Amendment will promote, and will not constitute an unreasonable risk to, the common defense and security.

THE SECRETARY OF STATE
WASHINGTON
January 15, 2014

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MEMORANDUM FOR THE PRESIDENT

FROM: John Kerry
Secretary of State



Ernest Moniz
Secretary of Energy



SUBJECT: Proposed Third Amendment to the Agreement for Co-operation
Between the United States of America and the International Atomic Energy
Agency (IAEA)

The United States and the IAEA have completed negotiations on the attached proposed Third Amendment to the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency (the "Amendment"). If you authorize execution of the Amendment, it will be signed by representatives of the United States and the IAEA. After signature, in accordance with section 123 b. and d. of the Atomic Energy Act of 1954, as amended (the "Act"), the Amendment must be submitted to both houses of Congress for a review period of 90 days of continuous session. Unless a joint resolution of disapproval is enacted, the Amendment may be brought into force upon completion of the review period.

The proposed Amendment would allow the Agreement for Co-operation between the United States of America and the International Atomic Energy Agency, signed at Vienna May 11, 1959, as amended February 12, 1974, and January 14, 1980 (the "Agreement"), to continue in force and thus continue to provide a comprehensive framework for peaceful nuclear cooperation with the IAEA and facilitate our mutual objectives related to nonproliferation and the peaceful uses of nuclear energy. The primary purposes of the Agreement are to enable exports from the United States of nuclear material and equipment to

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IAEA Member States for research reactors, and in certain cases power reactors, and to enable transfers from the United States of small samples of nuclear material to the IAEA itself for safeguards and research purposes.

Under the proposed Amendment, the term of the Agreement will be extended an additional 40 years for a total term of 95 years.

The Agreement permits the transfer of material, equipment (including reactors), and facilities for nuclear research and nuclear power production. It does not permit transfers of Restricted Data, sensitive nuclear facilities, or major critical components of such facilities, or unless specifically provided for in a supply agreement or an amendment thereto, transfers of sensitive nuclear technology. In the event of termination of the Agreement, key nonproliferation conditions and controls continue with respect to material, equipment, and facilities subject to the Agreement.

A more detailed discussion of the IAEA's nuclear nonproliferation and peaceful uses activities is provided in the Nuclear Proliferation Assessment Statement ("NPAS") at Attachment 4, and in a classified annex to the NPAS submitted to you separately. An addendum to the NPAS pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1), as amended, is being submitted to you separately by the Director of National Intelligence.

In accordance with the provisions of section 123 of the Act, the proposed Amendment was negotiated by the Department of State, with the technical assistance and concurrence of the Department of Energy. The proposed Amendment has also been reviewed by the members of the Nuclear Regulatory Commission. The Commission's views are being submitted to you separately.

In our judgment, the Agreement as amended by the proposed Amendment satisfies all requirements of U.S. law for agreements of this type. We also believe that continued U.S. cooperation with the IAEA in the peaceful uses of nuclear energy under the Agreement as amended by the proposed Amendment will be supportive of U.S. nonproliferation, foreign policy, and commercial interests. We recommend, therefore, that you determine, pursuant to section 123 b. of the Act, that performance of the Amendment will promote, and will not constitute an unreasonable risk to, the common defense and security; and that you approve the Amendment and authorize its execution.

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Recommendation

That you sign the determination, approval, and authorization at Attachment 1 and the transmittal letter to Congress at Attachment 2. (The transmittal will be held until the Amendment is signed.)

Attachments:

1. Draft Presidential determination, approval, and authorization
2. Draft transmittal letter to the Congress (To be held until after the Amendment is signed)
3. Text of Proposed Third Amendment to the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency
4. Unclassified Nuclear Proliferation Assessment Statement
5. Text of the Agreement for Co-operation Between the United States of America and the International Atomic Energy Agency, with 1974 and 1980 Amendments

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 23, 2013

The President
The White House
Washington, DC 20500

Dear Mr. President:

In accordance with the provisions of Section 123 of the Atomic Energy Act of 1954, as amended, the U.S. Nuclear Regulatory Commission reviewed the proposed amendments to the Agreement between the Government of the United States of America and the International Atomic Energy Agency Concerning Atomic Energy: Cooperation in Peaceful Application. It is the view of the Commission that the proposed Agreement includes all of the provisions required by law and provides a sufficient framework for civilian nuclear cooperation between the United States and the International Atomic Energy Agency and its Member States. The Commission therefore recommends that you make the requisite positive statutory determination, approve the proposed amendments to the Agreement, and authorize its execution.

Respectfully,

Allison M. Macfarlane

