

supporting documents may be obtained from Charles S. Cunningham (202) 647-0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395-3176.

Dated: February 12, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

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[Public Notice 2339]

Bureau of Political-Military Affairs, Office of Nuclear Energy Affairs; Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement

This notice sets forth U.S. agency procedures for implementation of the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Protocol (IAEA INFCIRC/288), hereinafter referred to as the Agreement.

For additional information, contact Alex Burkart (phone: 202-647-4413). Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs (PM/NE), Department of State, Washington, DC 20520.

A. Coordination

(1) IAEA Steering Committee.

(a) The interagency mechanism for coordinating policy and resolving disputes relating to the implementation of the Agreement shall be the IAEA Steering Committee (ISC), which is concerned generally with IAEA policy matters. The ISC is composed of representatives from the Department of State (State), the Department of Energy (DOE), the Nuclear Regulatory Commission (NRC), the Arms Control and Disarmament Agency (ACDA), the Department of Defense (DOD), the Office of Management and Budget (OMB), and the staff of the National Security Council (NSC) and the intelligence community (IC). The ISC is chaired by the U.S. Representative to the IAEA or such other official as may be designated by the Secretary of State. Representatives of the agencies which are ISC members are designated by the respective heads of such agencies. The ISC shall meet at such intervals set by the ISC and at any time at the request of any ISC member.

(b) In the event any question of interpretation of the Agreement affecting NRC arises which is not resolved by the ISC, the NRC shall seek and be bound by guidance from the

President. Neither this provision, nor any other provision in these procedures, shall in any way alter the responsibilities of the NRC or in any way limit the existing authorities and responsibilities of the NRC.

(2) Subgroup on IAEA Safeguards in the U.S.

(a) The ISC shall establish a subcommittee known as the Subcommittee on International Safeguards and Monitoring (SISM). This subcommittee will, in turn, establish the Subgroup on IAEA Safeguards in the U.S. (SISUS). SISUS shall be composed of representatives from State, ACDA, the NRC and DOE. The NRC will appoint the Chair of the SISUS. Each agency shall designate its respective representatives to serve on the SISUS.

(b) The SISUS shall monitor implementation of the Agreement, carry out responsibilities specifically prescribed in these procedures, and undertake such other working level activities as may be designated by the SISM or the ISC.

(3) Negotiating Team.

(a) The Negotiating Team shall be composed of the members of the Subgroup or their designates. Designates must be full-time Government employees of the Agency of the member. For negotiations with regard to NRC licensed or certified facilities, the NRC member will be the head of the Negotiating Team. For negotiations with regard to DOE facilities not licensed and subject to DOE orders, the DOE member will be the head of the Negotiating Team.

(b) The Negotiating Team shall negotiate with the IAEA the Subsidiary Arrangements and the Transitional Subsidiary Arrangements (collectively referred to as the Arrangements), and undertake such other responsibilities as may be designated by the SISM or the ISC.

(c) Counsel and other agency officials may participate in Negotiating Team activities at the request of their respective agency representative.

B. Communications

As provided in the Arrangements, normally, official communications on matters relating to implementation of the Agreement from the IAEA are to be addressed to State through the Mission of the United States of America to the IAEA (Mission), and from State are to be addressed to the IAEA through the Mission. An officer in PM/NE and an officer in the Mission shall be assigned responsibility for communications to and from the IAEA in connection with implementation of the Agreement. In the event of the occurrence of

unexpected circumstances, communications may be undertaken, as appropriate, other than as set forth in this Section of the procedures.

C. Regulation of NRC Licensed or Certified Facilities and Management of DOE License-Exempt Facilities

(1) For implementation of the Agreement.

(a) The NRC shall be responsible for maintaining necessary regulations applicable to NRC licensed or certified facilities; and

(b) DOE shall be responsible for maintaining appropriate mechanisms applicable to DOE license-exempt facilities.

(2) Requirements contained in the Arrangements shall be implemented as follows:

(a) With respect to an NRC licensed or certified facility, through the promulgation of regulations, the incorporation of appropriate amendments to licenses and the issuance of such orders as may be necessary to assure compliance; and

(b) With respect to a DOE license-exempt facility, through the promulgation of appropriate mechanisms.

D. Facility Attachments and Transitional Facility Attachments

The responsible agency (RA) is the NRC for NRC licensed or certified facilities and the DOE for DOE license-exempt facilities.

(1) Preparation. The RA shall participate with the IAEA in preparation of the material for the draft facility attachment and transitional facility attachment (collectively referred to as the draft attachment) for each facility selected by IAEA, under Article 39 of the Agreement or Article 2 of the Protocol. The RA shall consult with the facility operator and, as appropriate, arrange for such operator to participate in the preparation of the material for the draft attachment for such facility. The RA shall provide the Negotiating Team an opportunity to take part in preparation with the IAEA of the draft facility attachment for use in negotiation.

(2) Negotiation. The draft attachment shall be approved by the Negotiating Team for negotiation. Each facility attachment or transitional facility attachment (collectively referred to as the attachment) shall be negotiated with the IAEA by the Negotiating Team under the guidance of the SISM. In the course of these negotiations, the operator of the facility will be consulted and views and interests of each such operator will be considered. The facility

operator will be given the opportunity to review and comment on the attachment before it is agreed to by the U.S. Agreement shall be indicated by the ISC Chair or his designee initialing the attachment.

E. Information To Be Provided to the IAEA

(1) Reports on the status of nuclear material required to be submitted to the IAEA pursuant to the Agreement at specified intervals or occasions shall be compiled and submitted as follows:

(a) Review and transmission of initial reports and periodic accounting reports, including amplifications and clarifications thereof, in accordance with Codes 3.3 and 3.4 of the Arrangements, shall be the obligation of the RA. These reports shall be prepared on computer diskette by the Nuclear Materials Management and Safeguards System (NMMSS) operated jointly by NRC and DOE. The RA shall make arrangements for submission of the necessary data from each facility operator to NMMSS, which shall compile consolidated reports and send the diskette to the RA for review and transmission to PM/NE for delivery to the IAEA. The RA shall consult and provide to PM/NE, and PM/NE shall provide to the IAEA, the telex address and the telephone number of appropriate personnel to be available for use by the IAEA in seeking clarifications and amplifications (including questions concerning reported data) of the accounting reports.

(b) The RA shall prepare and transmit special reports, including amplifications and clarification thereof, in accordance with Code 3.5 of the Subsidiary Arrangements. The RA shall send each report to PM/NE to permit PM/NE to decide if any further review is needed prior to transmission by PM/NE to the IAEA and whether the report should be referred to the ISC for its consideration.

(c) In the event a material unaccounted for (MUF) at any facility selected by the IAEA under the Agreement exceeds the IAEA limits or the limits specified in 74.31(c)(5) or 74.59(f)(1)(i), whichever is smaller, the ISC shall determine in satisfying the terms of the Agreement what information if any relating to any U.S. investigation of the MUF is to be transmitted to the IAEA.

(2) Information other than reports described in paragraph (1) of this Section includes completed Design Information Questionnaires and other information needed in connection with design review, changes in design, and requirements with respect to radiological protection; and notification

of an intended withdrawal (Agreement Article 12(a)) and of an international transfer (Agreement Article 89). The RA shall be responsible for obtaining such required information and ensuring that it is prepared in prescribed format for transmission to the IAEA in accordance with Codes 3.1, 3.2, 3.6, and 3.7 of the Subsidiary Arrangements and Codes 3.1 and 3.2 of the Transitional Subsidiary Arrangements. Such information and notification shall be transmitted to the IAEA by State.

(3) The Agreement shall not be construed to permit the communication to the IAEA of Restricted Data controlled by the Atomic Energy Act of 1954, as amended.

F. Eligible List

(1) The list of eligible U.S. facilities provided to the IAEA under Agreement Article 1(b) (eligible list) shall be reviewed by the SISUS from time to time to determine if any addition or removal of a facility should be made. The RA shall be responsible for informing the SISUS of any change in the status of any facility, relative to possible addition to, or removal from, the eligible list. The SISUS shall recommend to the ISC changes to be made in the eligible list. In the event that any ISC member agency believes that for national security reasons a particular urgency exists relative to the removal of a facility from the eligible list, such agency may, where disagreement develops or where immediate affirmative action is deemed essential and cannot be accommodated by the ISC, seek to have the President decide regarding such proposed removal.

(2) Any changes in the eligible list shall be submitted to the IAEA by PM/NE through the Mission as provided in Agreement Article 34, after the following notification by State to the Congress:

(a) For any addition, after 60 days notice to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, which notice shall include an explanation of the basis on which the determination to make the addition was made, and if the Congress has not during said 60-day period passed a concurrent resolution of disapproval; and

(b) For any deletion, after notification to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

(3) State shall provide each of the ISC member agencies with a copy of the eligible list and changes thereto. The NRC shall make it available for

inspection in the NRC Public Document Room.

G. IAEA Consultants

(1) The Director General of the IAEA, in selecting any facility under the Agreement, may seek to consult with the United States in the interest of avoiding discrimination among U.S. facilities in accordance with Agreement Article 2(c). Moreover, the U.S. and IAEA may likely consult to insure compliance with Agreement Article 22; and the United States may request consultations in accordance with Agreement Article 80. All matters concerning any such consultation shall be considered by the SISUS on the basis of recommendations by the SISUS.

(2) In addition to consultations contemplated in paragraph (a) of this Section, PM/NE shall arrange for periodic consultations between the SISUS and the IAEA, in accordance with Agreement Article 19, to review progress in implementation of the Agreement and to consider any matter relevant to the Agreement which either party to the Agreement may raise.

H. Matters Raised by Facility Operators

Any question, complaint or request from a facility operator shall be directed to the RA. The RA shall consider the matter in accordance with its established procedures. Any questions from a facility operator concerning any interpretation of the Agreement or the Arrangements, any question relating to the payment of invoices by the IAEA to the facility operator, and any request from a facility operator with respect to exemption or termination of safeguards, other than as provided for in an attachment, shall be addressed to the RA. The RA will advise SISUS of such question or request for consideration. If necessary the matter will be referred to the SISUS, the Negotiating Team, or the SISUS/ISC for consideration or resolution.

I. Matters Raised by the IAEA

Any question, complaint, or request concerning implementation of the Agreement which is received from IAEA Headquarters by the Mission in accordance with Codes 1.1 of the Arrangements, and is not otherwise provided for in these procedures, shall be transmitted to PM/NE. PM/NE shall refer such matters to the SISUS for consideration and recommendation or resolution. The Chair of the SISUS will communicate these matters to the Negotiating Team, the SISUS, and the RA, as appropriate.

J. Matters Concerning IAEA Inspectors

(1) Any question, complaint or request for assistance from any IAEA inspector, while performing inspection activities in the United States, which is not resolved by personnel at the facility in question or through the RA contact, shall be referred to SISUS. The IAEA shall be provided with the names of designated officials in the NRC, DOE and PM/NE for this purpose, including 24-hour telephone number information. The designated official contacted shall advise the RA as soon as possible whenever so contacted, to determine whether any immediate action is appropriate and to obtain any necessary assistance from the appropriate RA official. If time and circumstances permit, the matter may be referred to the SISUS and, in any event, the SISUS shall be advised of the matter and its resolution.

(2) Any question, complaint or request from a facility operator concerning an action by an IAEA inspector shall be addressed to the RA. This shall be undertaken in the first instance by contacting an appropriate RA official, if present at the facility. If necessary, a designated official at RA headquarters shall be consulted. If not resolved by such consultation, the matter will then be addressed as described in Section H above.

(3) The RA shall be responsible for ensuring compliance with footnotes to Codes 3.2 of the Arrangements with respect to safety, radiation protection, and medical care of IAEA staff members carrying out functions under the Agreement.

K. Designation of IAEA Inspectors

Each proposal by the IAEA for designation of one or more inspectors for service in the United States which is received by the Mission shall be referred to the SISUS for consideration. If consensus cannot be reached, the matter will be referred to the SISM. State shall provide the U.S. response to each such proposal to the Mission for transmittal to the IAEA. PM/NE shall maintain the list of IAEA inspectors formally designated for service in the United States and shall provide copies of the list, and changes as they occur, to each ISC member agency. The NRC and DOE may provide copies of such lists to facility operators under their respective jurisdictions for their information.

L. Notification of IAEA Inspections and Visits

NRC and DOE shall consult and provide to PM/NE, and PM/NE shall provide the IAEA, the name, telex

address, and telephone number of an appropriate official and alternate to be contacted by the IAEA for advance, informal coordination and planning of any inspection or visit. This official shall coordinate preparation for each inspection or visit with any facility involved and provide timely responses directly to the IAEA. Such coordination shall be in preparation for the formal advance notification of each IAEA inspection and visit (Agreement Article 81 and Protocol Article 11(b)) which, when received by the Mission, shall be provided to State by telegram, with the NRC and DOE as information addresses. SISUS shall maintain a schedule of each planned IAEA inspection or visit and provide copies to the ISC member agencies upon request. The operator of each facility to be inspected or visited shall be so informed by the RA. The RA shall also arrange for the IAEA inspector to be accompanied by one or more RA representatives. The RA shall, to the extent possible, accommodate requests by SISUS members to be present during inspections. Should the IAEA elect to perform unannounced inspections, the RA, when notified by the facility, shall make a determination of the need to send a representative to the site as soon as practical.

M. Reports by the IAEA

Reports by the IAEA, in accordance with Agreement Articles 41, 64 and 88, of its inspections and other safeguards activities in the United States, when received by the Mission, shall be transmitted to State. PM/NE shall provide copies to the ISC member agencies and the Chair of the SISUS, and shall also maintain a file of such reports. The SISUS shall review these reports and determine any needed action.

N. Implementation Reports

SISUS, on the basis of information collected by the NRC and DOE and information obtained from the IAEA, may prepare periodic reports concerning implementation of the Agreement, including, inter alia, pertinent statistics, lists of facilities inspected, and other relevant data for the information of government agencies, the Congress and the public.

O. Agreement Article 22

State shall institute steps as necessary to suspend, for the duration of the Agreement, the application of IAEA safeguards in the United States under other safeguards agreements with the IAEA. State shall maintain a list of the agreements, required by Code 3.8.1 of the Subsidiary Arrangements, under which the application of such

safeguards has been suspended and shall provide this list and all subsequent changes to each ISC member agency. DOE shall prepare the reports required by Codes 3.8.2 and 3.8.3 of the Subsidiary Arrangements for delivery of these reports to State for transmission by State to the IAEA within the time limits stipulated in Codes 3.8.2 and 3.8.3 DOE shall also be responsible for the monitoring function called for in footnote 3 of Code 3.8 of the Subsidiary Arrangements and for reporting, at least annually, to State the results of such monitoring.

P. Role of These Procedures and Their Modification

(1) Scope. These procedures are for the purpose of interagency coordination and shall not affect the internal coordination mechanism of any agency. These procedures establish requirements solely applicable to certain agencies of the United States Government, rather than individuals, and, accordingly, are not rules within the meaning of the Administrative Procedure Act.

(2) Amendment. These procedures may be amended from time to time by the ISC.

Dated: February 15, 1996.

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Bureau of Political-Military Affairs, United
States Department of State.*

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST-95-676 and OST-95-677]

Applications of Falcon Air Express, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 96-2-34).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Falcon Air Express, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 4, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets