

MEMORANDUM OF EX PARTE COMMUNICATION WITH THE DEPARTMENT OF ENERGY

Date: Wednesday, August 21, 2013

Attendees: Katie Strangis (DOE/NNSA), Zachary Stern (DOE/NNSA), Gretchen Smith (DOE/NNSA), Madeleine Foley (DOE/NNSA), Ashley Fullenwider (Argonne National Laboratory[ANL]), Chad Mund (ANL), Donald Gerber (B&W Pantex LLC), Deena Bean (Pacific Northwest National Laboratory [PNNL]), Paul Philipsberg (Brookhaven National Laboratory), Jennifer Gilbert (DOE), Brian Niesman (Fermi National Accelerator Laboratory), Lesa Brownell (Honeywell), Callin Branter (Idaho National Laboratory), Todd Stephens (Lawrence Livermore National Laboratory [LLNL]), Steve Hensley (Lockheed Martin Corporation), Janelle Armendariz (Los Alamos National Laboratory [LANL]), Sarah Maynard (LANL), David Miranda (LANL), Dennis Ritschel (LANL), Roger Rodrigues (LANL), Thomas Tierney (LANL), Joy Torres (LANL), Andrew Wall (LANL), Donte Davis (Savannah River Field Office), Greg Sergent (Oak Ridge National Laboratory [ORNL]), Krystee Ervin (ORNL), Rolf Migun (ORNL), Kimberly Galloway (PNNL), Gary Hagen (PNNL), Alan Rither (PNNL), Lynette Sewell (PNNL), Robert Sheneman (Princeton Plasma Physics Laboratory), James Wilhelm (Sandia National Laboratories [SNL]), Chris Garcia (SNL), Paula Maestas (SNL), Alan Rittel (SNL), Susan Washburn (SNL), Mary Lee (Stanford University), Bill Chappell (Y12 National Security Complex), Sara Webb (Y12 National Security Complex)

Summary of what was discussed:

The presentation delivered at the 2013 Export Control Coordinators Organization Training addressed changes that were made to the September 2011 Notice of Proposed Rulemaking (NOPR) to update regulations relating to Assistance to Foreign Atomic Energy Activities and the July 2013 Supplemental Notice of Proposed Rulemaking (SNOPR) (RIN 1994-AA02). Any information that is not contained in the current regulation, NOPR, or SNOPR was not discussed at this meeting.

In her remarks, Katie Strangis provided an overview of Part 810 nuclear export control regulations and discussed the changes that were proposed in the recently released SNOPR, noting that the 2013 SNOPR was drafted to respond to feedback and suggested changes submitted in response to the 2011 NOPR.

The first major change in the SNOPR is the change in country lists for General Authorizations and Specific Authorizations. The SNOPR proposes to move to a Generally Authorized list of countries which meet the statutory requirement of a non-inimicality determination by the Secretary of Energy. As required by the Office of Management and Budget for the second proposed rulemaking, the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) assessed the economic significance of the proposed rule, paying particular attention to possible affects of the proposed changes to the country lists. DOE/NNSA performed an analysis with the U.S. Department of Commerce based on four well-known and authoritative projections of nuclear trade over the next 30 years.

The second major change contained in the SNOPR relates to non-U.S. persons employed at U.S. nuclear installations under NRC rules. Strangis explained that the SNOPR proposes to generally authorize foreign nationals access to nuclear technology at U.S. facilities if the employee has signed a confidentiality agreement; has already been granted access to the facility by the Nuclear Regulatory Commission; and this authorized access is reported by the foreign national's employer. This proposed change would remove duplicative regulation and support U.S. industry.

A third major change contained in the SNOPR relates to operational safety assistance. Strangis explained that the SNOPR proposes to retain the “fast track” authorization for safety and nuclear emergency assistance that exists in the current regulation.

Strangis also noted that in addition to the changes DOE is proposing in the 2013 SNOPR, it is also working to improve the Part 810 process. Possible improvements the Department is considering include: a Part 810 guide for export control professionals; an e-licensing system; and a fast-track authorization process.

During the Q&A session, a participant asked whether the transcript from the August 5, 2013, public meeting was available and when the second public meeting would be held. Strangis stated that the transcript for the August 5 meeting was available on the DOE/NNSA webpage pertaining to the SNOPR and that although dates are not yet set for the second meeting it will likely occur in late September/early October.

Another participant asked for further details about the e-licensing system that was mentioned under possible process improvements. Strangis explained that at this point the e-licensing system is in development, so no further details could be provided but that we hoped that it would be released soon.

The concept of a grandfather clause was also raised, specifically whether transfers made under recently issued Specific Authorizations would be honored. Strangis explained that since this question was process-related she could not provide an answer at this time, but suggested that this question be posed formally.

Ms. Strangis was asked to discuss where “123” in the “123 Agreement” comes from. Strangis explained that “123” refers to section 123 of the 1954 Atomic Energy Act.

A participant asked how a person or company should know whether they need a Part 810 license and whether this was clarified in the SNOPR. Strangis explained that DOE tried to clarify what is and is not covered by Part 810 export control regulations in the SNOPR, but will also provide additional information on the DOE website. She also suggested contacting the program office for a determination.

Finally, Ms. Strangis was asked whether a DOE laboratory must apply for a Part 810 license if it is engaging in work with the Department. She explained that DOE laboratories must apply for a Part 810 license only if they are engaging in work for others, which includes other U.S. Government agencies.