

MEMORANDUM OF EX PARTE COMMUNICATION WITH THE DEPARTMENT OF ENERGY

Date: Thursday, December 5, 2013

DOE/NNSA Attendees:

Katie Strangis, Department of Energy/National Nuclear Security Administration
LaReina Parker, Department of Energy/National Nuclear Security Administration
Madeleine Foley, Department of Energy/National Nuclear Security Administration

Summary of what was discussed:

The discussion concerned changes between the September 2011 Notice of Proposed Rulemaking (NOPR) to update regulations relating to Assistance to Foreign Atomic Energy Activities and the August 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.

Katie Strangis presented on the SNOPR at the 5th Annual NEI-Pillsbury Seminar. Strangis gave an overview of the scope of 10 CFR Part 810 Regulations, listed key events remaining in the rulemaking schedule before the final rule can be issued, and highlighted the major elements of the proposed rule changes. These include the proposed change in country lists for General Authorization and Specific Authorization; proposed de-duplication of Deemed Export regulation between DOE and the Nuclear Regulatory Commission; and the proposed reinsertion of the operational safety "fast-track" provision. Strangis listed minor elements of the proposed rule changes, including clarifications within the SNOPR regarding publically available information, activities with remote connection to special nuclear material and activities carried out by IAEA personnel. Strangis noted that these activities would be generally authorized or would fall outside of the scope of the proposed regulation.

Strangis thanked attendees and members of the public for comments received and noted that DOE/NNSA staff are in the process of reviewing the comments for suggested improvements to the supplemental proposed rule. She delivered an overview of frequent comments not reflected in the NOPR or SNOPR and reiterated the reasons these suggestions could not be incorporated into the final rule. These included the deregulation of activities by foreign affiliates with greater than 50% U.S.-Ownership; the authorization of dual citizen deemed exports based on the most recent residence; the general authorization of marketing information and the general authorization of 25% "Americanized" technology.

Strangis provided slides but did not elaborate on the economic impact study, which DOE conducted to analyze the economic effect of the SNOPR.

Strangis received one question during the question and answer section: "What does a country have to do to become Generally Authorized?" Strangis recalled the statutory requirement set forth in Section 57 a of the Atomic Energy Act that the Secretary of Energy make a determination that a transfer of nuclear technology not be inimical to the interests of the United States before an export may take place. Strangis noted that such determinations are fulfilled through the Nonproliferation Assessment Statements required to conclude 123 Agreements, but that DOE is open to suggestions on other criteria to serve as the basis of a non-inimicality determination.