



April 2, 2014

Mr. Richard Goorevich, Senior Policy Advisor
Office of Nonproliferation and International Security, NA-24
National Nuclear Security Administration
Department of Energy (DOE)
1000 Independence Avenue SW
Washington, D.C. 20585

Via email: Part810.SNOPR@hq.doe.gov

Subject: RIN 1994-AA02

Dear Mr. Goorevich,

I am writing on behalf of the Association of University Export Control Officers (AUECO), a group of senior export practitioners at 46 accredited institutions of higher learning in the United States. AUECO members monitor proposed changes in laws and regulations affecting academic activities and advocate reforms that will improve the efficiency and effectiveness of the United States export control system.

AUECO fully supports the mission of protecting the nation's most sensitive technologies, including nuclear technologies, and hopes that re-opening the supplemental notice of proposed rulemaking (SNOPR) for additional comment will result in a regulatory environment that fully supports university research, scientific communication, and educational exchanges in the United States.

AUECO concurs with public comments that U.S. nuclear export control regulations are more complex, more restrictive, and less efficient than those of other Nuclear Suppliers Group countries. At a time when other countries are considering simpler and more open nuclear export controls, the proposed changes would place U.S. parties, including universities and research institutes that compete globally for the best and brightest students and faculty, at a distinct competitive disadvantage.

In addition to our previous comments (attached), AUECO joins the U.S. Chamber of Commerce, Nuclear Energy Institute (NEI), Nuclear Infrastructure Council, and others, offering the following comments:

1. There is insufficient basis in statute and/or international agreements to support the proposed changes. As AUECO noted in previous comments, the Atomic Energy Act and the Nuclear Nonproliferation Treaty both clearly reflect a legislative intent to protect university research and scientific communication from regulation. The proposed changes are inconsistent with the legislative authority granted to the Department of Energy (DOE) and would subject scientific communication and university research to new requirements without a sound statutory basis.

Similarly, NEI's comments call out the insufficient basis in statute or international agreement for many of the proposed regulatory changes in the SNOPR. Comments submitted by Minority Whip James E. Clyburn (D-SC) and Reps. Judy Biggert (R-IL), Jason Altmire (D-PA), and Mike Simpson (R-ID) note that the proposed rule attempts to codify the DOE's overly broad interpretations, and expand the DOE's authority "beyond its statutory mandate".

2. As noted by NEI, the regulatory analysis performed has "fundamental flaws that mask the proposed rule's significant and counterproductive impacts".
3. More than 70 additional countries would require specific authorization under the SNOPR. As noted in NEI's comments, the DOE does not have unfettered discretion to make such sweeping changes; merely asserting that they are "based on U.S. nuclear and national security policies" is insufficient justification. To date, little appears to have been done to establish and document the legal basis DOE is invoking to justify the new specific authorization requirements under existing statutes or international agreements. This departure from the previous 810 rule represents a significant compliance burden that would unnecessarily inhibit academic exchanges and scientific communication.
4. Treatment of China, India and Russia is inconsistent with other countries. AUECO agrees with NEI's concerns that DOE "has failed to treat these three states in the same manner as other countries with nuclear cooperation agreements, and has not proposed even an intermediate approach to authorizing transfers to China, India and Russia, as requested by NEI".
5. The proposed deemed export general authorization is limited and does not mitigate the burden on U.S. suppliers. Additionally, there is no explanation as to why DOE is not adopting the Export Administration Regulations approach to deemed exports and re-exports.
6. AUECO appreciates DOE's changing of the term "basic scientific research" to "fundamental research", which would more closely align 10 CFR 810 with other U.S. export control regulations. However, the proposed regulations still fail to protect development or applied research as stipulated in the AEA. Furthermore, AUECO remains concerned about the definition and use of the terms "technical services" and "nuclear reactor", as well as DOE's approach to "publicly available information".
7. AUECO takes issue with DOE's continuing refusal to address the issue of dual nationals in the revised SNOPR. Both the Departments of State and Commerce offer specific guidance on dual national licensing and we urge DOE to do the same.

In conclusion, AUECO urges the DOE to consider the unintended consequences that the SNOPR would have on academic endeavors and the long-term impact that this would have on U.S. scientific and economic competitiveness. Due to the outstanding issues identified above, AUECO joins the U.S. Chamber of Commerce in calling upon the DOE to withdraw the proposed rule.

AUECO thanks the Department of Energy for the opportunity to comment on the SNOPR.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Peloso".

Elizabeth Peloso

Chair

Association of University Export Control Officers

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