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DEPARTMENT OF ENERGY

DEPARTMENT OF STATE

DEPARTMENT OF COMMERCE

NATIONAL NUCLEAR SECURITY

ADMINISTRATION

Amendment to Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978

AGENCIES: National Nuclear Security Administration, Department of Energy; Department of State, Department of Commerce

ACTION: Notice.

SUMMARY: Section 3136 of the National Defense Authorization Act for Fiscal Year 2016 (NDAA) mandates that the Office of the Director of National Intelligence (ODNI) also be consulted with respect to each authorization under section 57b.(2) of the Atomic Energy Act of 1954, as amended (AEA), to a covered foreign country as defined in section 3136(i)(2) of the NDAA. This amendment to the Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978 implements this consultation requirement.

DATES: *Effective:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC), National Nuclear Security Administration (NNSA), Department of Energy (DOE), 1000 Independence Avenue, SW, Washington, DC 20585,

Richard.Goorevich@nnsa.doe.gov, telephone 202-586-0589; or Mr. Dick Stratford, Director, Office of Nuclear Energy, Safety, and Security, Department of State (DOS), 2201 C St, N.W. Room 3320, Washington, D.C. 20520, StratfordRJ@state.gov, telephone 202-647-4413; or Mr. Steven Clagett, Director, Nuclear and Missile Technology Division, Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, Steven.clagett@bis.doc.gov, telephone 202-482-1641.

SUPPLEMENTARY INFORMATION:

Background

Section 57b.(2) of the Atomic Energy Act of 1954, as amended (AEA), is implemented through the DOE/NNSA regulations under Title 10 of the Code of Federal Regulations (CPR) Part 810 (Part 810) governing exports of unclassified nuclear technology and assistance. On February 23, 2015, DOE/NNSA published its final rule (80 FR 9359) revising Part 810. The final rule came into effect on March 25, 2015. Before the Secretary of Energy authorizes certain transfers of civil nuclear technology and assistance, DOE/NNSA is required to consult with the Nuclear Regulatory Commission (NRC), the Department of Commerce (DOC), and the Department of Defense (DoD), and obtain the concurrence of the Department of State (DOS). These reviews are accomplished in a manner consistent with Part D of the Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978 (the "Procedures"), as published in the Federal Register on June 7, 1978 (43 FR 25326), and amended by publication in the Federal Register on May 16, 1984 (49 FR 20780), and February 19, 1991 (56 FR 6701). This amendment addresses only Section 12 of Part D of the Procedures to implement the new requirements of Section 3136 of the NDAA, which mandates that the Director, ODNI, also be consulted with respect to each authorization under section 57b. of the

AEA to a covered foreign country as defined in section 3136(i)(2) of the NDAA.

Amended Procedure

To provide for consultation with the ODNI on applications for specific authorization under section 57b.(2) of the AEA, as implemented by DOE/NNSA regulations at 10 CFR Part 810, Section 12 of Part D of the Procedures is amended as follows:

1. Within 10 days of receipt of an application for specific authorization for a transfer of technology controlled under 10 CFR Part 810, DOE/NNSA conducts a technical review of the application to determine whether the application is properly submitted and falls within the scope of the regulation.

1. a. Concurrent with the internal DOE/NNSA technical review, for packages involving covered foreign countries as defined in section 3136(i)(2) of the NDAA, DOE/NNSA sends the end user, equipment, supplier information, and any other relevant information to ODNI. ODNI notifies Intelligence Community (IC) elements of the application for transfer of technology as soon as possible.

1. b. Within 10 business days of initial notification, ODNI identifies, based on the details of the transfer application and availability, an IC point of contact (POC) to provide a response. DOE/NNSA provides ODNI with any technical reviews or assessments conducted by DOE/NNSA relevant to the technology transfer.

1. c. Within 30 business days of receiving the end user, equipment, and supplier information from DOE/NNSA, ODNI makes its coordinated response available to: DOE/NNSA; DOS; and NRC, DOC, and DoD (collectively herein referred to as the "Consulting Agencies").

2. After the DOE/NNSA technical review is complete, with expected timelines of not

more than 60 days for covered foreign countries and 30 days for other destinations, DOE/NNSA transmits through appropriate means the application and DOE/NNSA analysis to DoD, DOC, DOS, and NRC for review. Within 30 days after receipt, DOS and the Consulting Agencies provide their views on the application and analysis. If DOS or a Consulting Agency notifies DOE/NNSA NPAC in writing that additional information is required, NPAC will provide appropriate time for all Consulting Agencies to consider the application and a new time line will be established for reviews based on individual circumstances. Note that the U.S. Government, through DOS, requests foreign government assurances for specific authorizations, and it is the foreign government's control over how long it may take to deliver these assurances, which may lengthen the time line for interagency review beyond the expected 30 days.

3. Within 100 days following the completion of the interagency consultations, NPAC provides the Secretary of Energy with a recommendation for action on the application, including the views of DOS, the Consulting Agencies, and ODNI, if applicable. In the event that any such agencies recommend further consideration this timeline may be extended.

Information provided to DOE in connection with these procedures may be marked or otherwise identified as business proprietary and/or personally identifiable information and would be subject to protection in accordance with applicable law and Executive

Orders. Such information would be made available within the respective agencies only to those personnel who have a need to know for the purpose of reviewing applications for exports of unclassified nuclear technology and assistance under section 57b.(2) of the Atomic Energy Act of 1954, as amended, and otherwise disclosed only with the express consent of DOE/NNSA or when such disclosure is required by law.

Dated: November 2, 2016.

Kasia Mendelsohn, Associate Deputy Administrator

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Department of Commerce

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