

EDO Principal Correspondence Control

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FINAL REPLY:

EDATS: SECY-2007-0102

Paul S. Schmidt
Organization of Agreement States

TO:

Chairman Klein

FOR SIGNATURE OF :

** PRI **

CRC NO: 07-0258

Chairman Klein

DESC:

Fingerprinting and Criminal History Checks -
Section 652 of the Energy Policy Act of 2005

ROUTING:

Reyes
Virgilio
Kane
Silber
Johnson
Cyr/Burns

DATE: 04/19/07

ASSIGNED TO:

CONTACT:

FSME

Miller

SPECIAL INSTRUCTIONS OR REMARKS:

~~NOT to be made publicly available in ADAMS.~~

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2007-0102

Initiating Office: SECY

General Information

Assigned To: FSME

OEDO Due Date: 4/30/2007 5:00 PM

Other Assignees:

SECY Due Date: 5/2/2007 5:00 PM

Subject: Fingerprinting and Criminal History Checks - Section 652 of the Energy Policy Act of 2005

Description:

ADAMS Accession Numbers

Incoming:

Response/Package:

Document Information

Originating Organization: Organization of Agreement States

Originator Name: Paul S. Schmidt

Incoming Task Received: Letter

Date of Incoming Document: 4/17/2007

Document Received by OEDO Date: 4/19/2007

Date Response Requested by Originator: NONE

Addressee: Chairman Klein

Process Information

Action Type: Letter

Priority: Medium

Sensitivity: External Govt/Int'l Controlled

Signature Level: Chairman Klein

Urgency: NO

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: ~~NOT to be made publicly available in ADAMS.~~

Other Information

Cross Reference Number: G20070258, LTR-07-0258

Related Task:

File Routing: EDATS

Agency Lesson Learned: NO



Organization of Agreement States

Paul Schmidt, Chair, Wisconsin
Cindy Cardwell, Chair-Elect, Texas
Barbara Hamrick, Past-Chair, California
Tom Conley, Treasurer, Kansas
Alice Rogers, Secretary, Texas
Steve Collins, Director, Illinois
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April 17, 2007

The Honorable Dale E. Klein, Ph.D., Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

SUBJECT: Fingerprinting and criminal history checks

Dear Chairman Klein:

The Organization of Agreement States (OAS) Executive Board has a number of concerns regarding the proposed implementation of Section 652 of the Energy Policy Act of 2005 (EPAAct) relating to fingerprinting and criminal history record checks that we wish to bring to your attention. During a March 21, 2007 conference call between NRC staff, OAS members and members of the Conference of Radiation Control Program Directors (CRCPD), NRC staff informed the participants that the Commission had disapproved NRC staff's proposal to postpone implementation of Section 652 of the EPAAct until a rulemaking is completed and directed NRC staff to engage the Agreement States to develop a plan for implementation via security orders or other legally binding requirements within six months.

The OAS Executive Board and the Agreement States have been committed partners with NRC in enhancing the security of radioactive materials, especially after the events of September 11, 2001. It is the intention of the OAS Executive Board to facilitate continued partnership with the NRC on security issues, but partnership requires consultation, cooperation, and sometimes compromise by all parties. In the case of the Commission's March 12, 2007 decision to reject NRC staff recommendations with respect to Section 652 of the EPAAct, the Commission also implicitly rejected the OAS Executive Board's support of the staff recommendations, communicated to the Commission in the May 15, 2006 Commission briefing. The rejection of all recommendations to postpone implementation until a rulemaking is completed, without any clear demonstration that the measures already in place were not effective in preventing the sabotage, theft or diversion of radioactive materials in quantities of concern, appears unwarranted. Specifically, the OAS Executive Board is not aware of any particular failure of the Increased Controls, which are already in place, to prevent a sabotage, theft or diversion of these materials.

There is significant concern that this unilateral decision by the Commission imposes an unreasonable timeline for action, without any good cause. In addition, there is

significant concern that the Agreement States' unanimous agreement to impose the Increased Controls as a mandatory and immediate matter of compatibility is being interpreted as an open-ended agreement that may be expanded by the Commission at any time and in any direction. At the time the Agreement States agreed to impose the Increased Controls upon their own licensees, agreement was based upon a very specific, detailed implementation plan, without any expectation that the plan could be amended at any time at the will of the Commission. Finally, the OAS Executive Board notes that Congress provided discretion to the Commission in Section 652 of the EPAct, to determine the types and quantities of radioactive material significant enough to warrant fingerprinting and criminal history record checks and other details of the implementation. The OAS Executive Board suggests that decisions in this regard would benefit significantly from the rulemaking process, allowing State and other stakeholder input regarding the possible impediments to implementation, and a better understanding of what types and quantities of radioactive materials truly warrant such additional controls. Without evidence of a pressing need for these additional controls at this time, it appears that the rulemaking process is best suited to balance the benefits and burdens of these additional controls in a fair and open manner.

The OAS Executive Board has already provided the names of the State representatives to the new Working Group created to examine the issues related to the implementation of Section 652 to the Office of Federal and State Materials and Environmental Management Programs. We fully intend to continue supporting this process. In addition, we also intend to confer with the agreement states to identify any possible impediments to this course of action and share this information with the Commission.

The OAS Executive Board thanks you for your consideration. Please contact me if you would like to discuss this matter further.

Sincerely,

Paul S. Schmidt, Chair
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