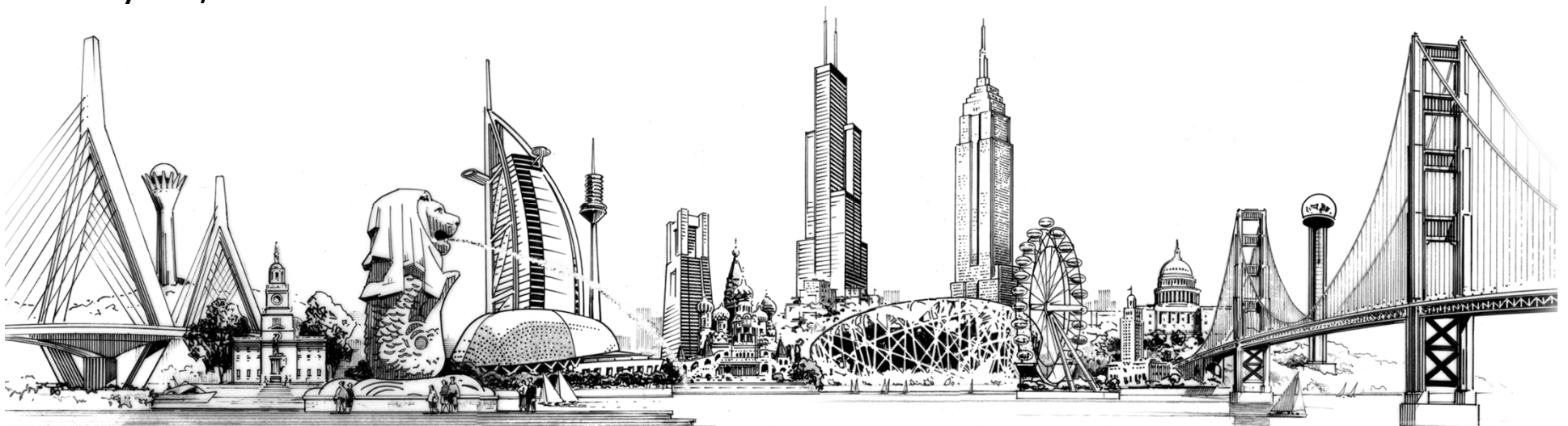


Morgan Lewis

NUCLEAR REGULATORY UPDATE

Paul M. Bessette
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July 25, 2017



AGENDA

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• Decommissioning Spotlight

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• Severe Accident Mitigation Guidelines

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• Research & Test Reactors: NIST PRM

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DECOMMISSIONING SPOTLIGHT



**Paul M.
Bessette**

Decommissioning Update – July 2017

- March 2017—NRC issued FRN soliciting public comments on the draft Regulatory Basis Document (RBD) for Decommissioning Rulemaking (82 Fed. Reg. 13,778)
 - Appendix H: Seeks public comments on “Current Regulatory Approach to Decommissioning,” including:
 - (1) PSDAR review and approval by NRC,
 - (2) role of state and local governments, and non-governmental stakeholders, and
 - (3) clarification of spent fuel management requirements.
- *Substantial differences of opinion between NRC, Industry (NEI), and States on these issues could affect the resolution of these issues, with important consequences to the industry*

PSDAR Review & Approval

- Existing Regulatory Framework
 - PSDAR submitted prior to or within 2 years of permanent cessation of operations
 - PSDAR made available for public review and discussed at public meeting, but NRC approval of the PSDAR is not required
 - Direct result of 1996 Decommissioning Rulemaking
- NRC Proposal
 - “Encourage” licensees to add additional detail to PSDAR on topics of “greatest interest” to stakeholders (Option 2)
 - Strongly opposed by Industry/NEI as increasing regulatory burden with no corresponding improvement in safety, security, or efficiency.
 - Also strongly opposed by state and local governments, who want additional detail and to return to NRC review and approval process
 - Would convert NRC review into an NRC licensing action subject to NEPA and potential hearing, with potentially substantial delays to major decommissioning activities
- Likely area of legal challenges to rulemaking

Role of State & Local Governments

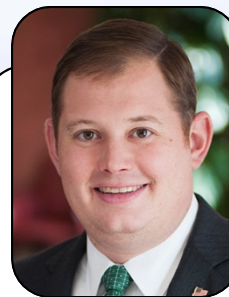
- Existing Regulatory Framework
 - Limited to public notices, public meetings, courtesy meetings with state and local governments
- NRC Proposal
 - Issue additional guidance on “best practices” related to community engagement
 - Opposed by Industry/NEI: community engagement is extremely site specific
 - Also opposed by state and local governments
 - Should be formed at state/local government levels, but funded by licensees.
- States also seeking a recognized, broader role related to non-radiological contamination, including new regulations more clearly defining the limitations of NRC’s authority
 - Raises sometimes “murky” preemption issues
 - Implicates state/NRC authority over SAFSTOR decisions
- Potential implications for spent fuel litigation and settlement

Spent Fuel Management

- Existing Regulatory Framework
 - No licensee requirement to document, or for NRC to review and approve, how to manage and move the spent fuel offsite before decommissioning SSCs that support moving, loading, and shipping of spent fuel offsite
 - Addressed in LTP, but by then most facilities decommissioned
- NRC Proposal
 - Rulemaking requiring that the PSDAR describe how spent fuel stored under a general ISFSI license will be removed from the reactor site, and how it will be managed prior to decommissioning SSCs needed for moving, unloading, and shipping spent fuel.
 - Opposed by Industry/NEI as not improving public health and safety or efficiency of decommissioning
 - Supported by state and local governments, seeking more detail on “how spent nuclear fuel will be stored indefinitely.”
- Presents substantial challenges due to uncertainty in direction and schedule for federal waste program
- Also potential implications to decommissioning funding estimates

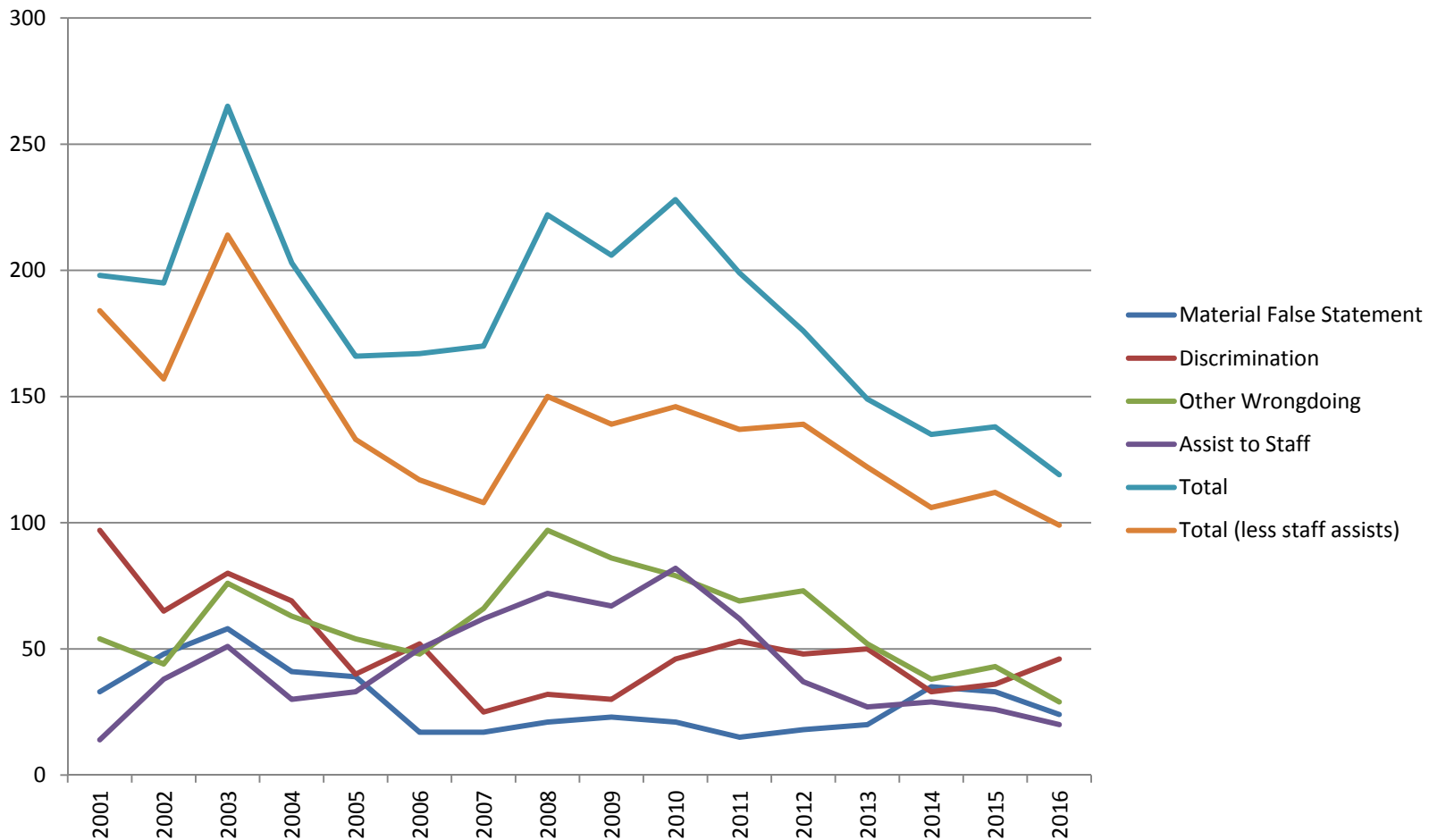
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ENFORCEMENT TRENDS



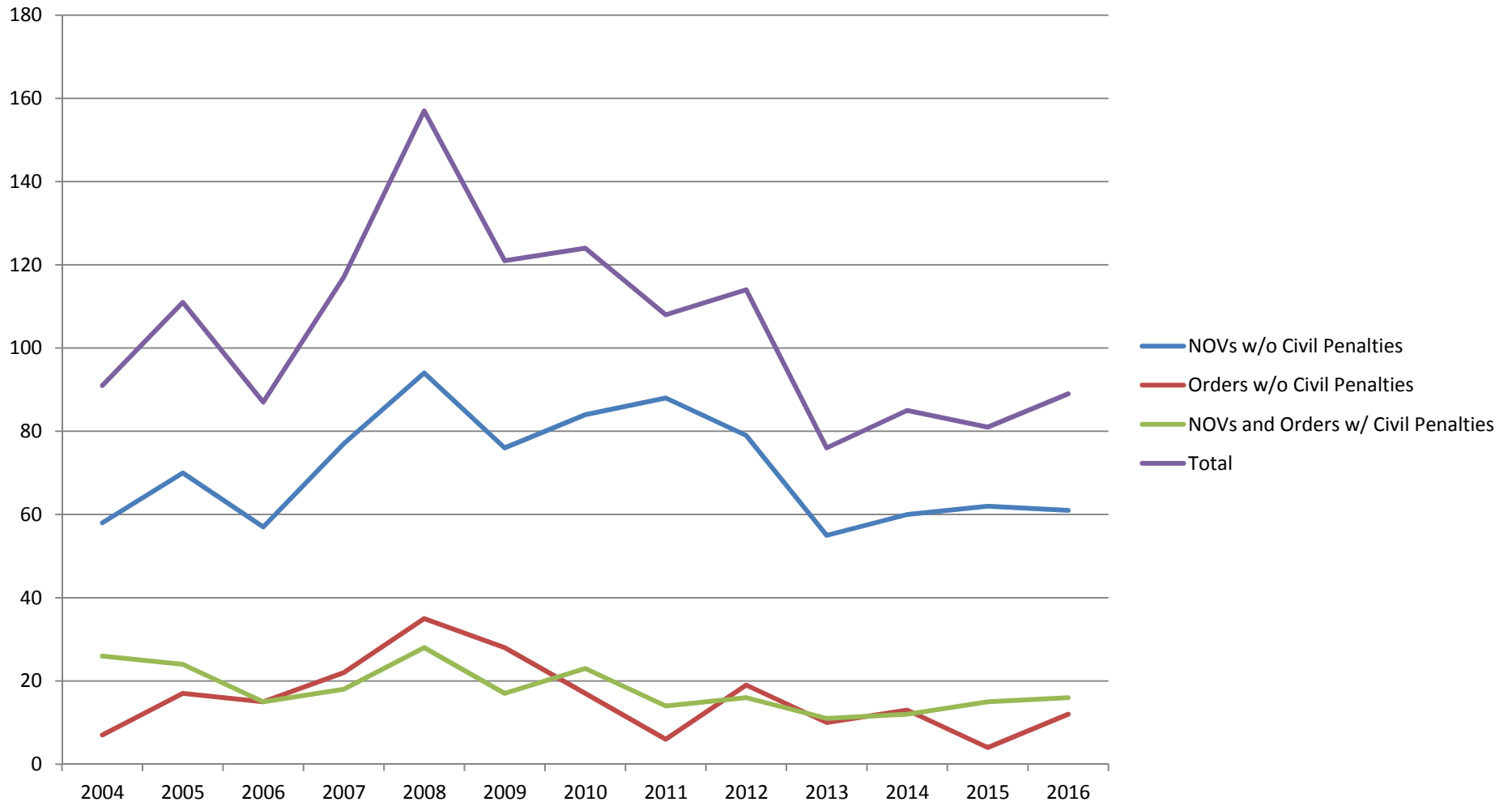
**Grant W.
Eskelsen**

Number of Investigations are Going Down



Source: NRC Office of Investigations Annual Reports

Number of Enforcement Actions Went Up



Source: NRC Office of Enforcement Annual Reports

3

SEVERE ACCIDENT MITIGATION GUIDELINES



**Ryan K.
Lighty**

SAMG Background

- Provide the strategies and guidelines to mitigate the consequences of a severe accident.
- When it is determined that adequate core cooling is no longer assured, the licensee exits the plant Emergency Operating Procedures or other governing processes and enters the SAMGs.
- The SAMGs are symptom-based, pre-planned accident mitigation strategies that were developed using modern thermal-hydraulic and accident progression and consequence modeling.
- The SAMGs were developed for use in specific reactor designs and then adapted by individual licensees to reflect plant-specific design features and capabilities.
- The SAMGs are currently in place at all operating power reactor sites as a voluntary industry initiative.

Proposed SAMG Rule

- Post-Fukushima: Near Term Task Force (NTTF)
- Several NTTF recommendations consolidated into “Mitigation of Beyond Design Basis Events” rulemaking:
 - NTTF 8 and 11 (portions) for Onsite Emergency Response Capabilities.
 - NTTF 9 (portions) for numerous Emergency Preparedness actions.
 - NTTF 4 and 7 for Station Blackout Mitigating Strategies and Spent Fuel Pool Instrumentation and Makeup Capabilities.
 - NTTF 10 (portions) for Prolonged Station Blackout & multiunit events.
- Proposed rule submitted to Commission in SECY-15-0065
 - would have made SAMGs a regulatory requirement
- Commission rejected mandatory SAMGs in SRM-SECY-15-0065

CLI-17-08 & Chairman's "Additional Views"

- Commission approved issuance of North Anna 3 COL
 - Included condition related to SAMG because it had a sufficient regulatory basis in the ESBWR DCD (codified)
- Staff response to Commission's Post-Hearing Questions:
 - While 10 C.F.R. § 52.47(a)(23) & (27) do not require SAMGs, Staff "expects as a logical outgrowth of these provisions" that SAMGs would be necessary.
- Chairman Svikicki:
 - Staff's interpretation is inconsistent with SRM-SECY-15-0065 rejecting mandatory SAMGs because it would "effectively re-impose" the SAMG requirement
 - "Logical outgrowths" are not a valid basis for regulatory interpretation; this is a term of art in administrative law for determining whether a final rule is within the scope of the proposed rule in notice and comment rulemaking; applying it here would lead to unwritten requirements, contrary to NRC "Principles of Good Regulation."

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LICENSE TRANSFERS: LIC-107 REV. 2



**Grant W.
Eskelsen**

License Transfer Requirement

- Section 184 of the Atomic Energy Act –
 - “No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and s hall give its consent in writing.”
 - NRC Regulations in Part 30, Part 40, Part 50, Part 55, Part 70, and Part 110 implement this restriction
- Direct versus Indirect Transfers
- Review of financial and technical qualifications; decommissioning funding; foreign ownership, control, or domination; and insurance and indemnity.
- Requirements for conforming license amendments

NRC Procedures for License Transfers

- NRR has issued LIC-107, Rev. 2 in May 2017 as internal guidance for review of license transfers – specific to nuclear reactors
- Lists types of Transactions that Might Require License Review
 - Ownership changes
 - Mergers
 - Formation of holding companies
 - Restructuring
- Key guidance:
 - Expects that Office of General Counsel will be involved early in process
 - Need to coordinate with NMSS for:
 - Facilities in SAFSTOR
 - Facilities transferred to NMSS
 - ISFSIs with Specific License
 - “Adopting and endorsing” pending licensing requests

NRC Procedures for License Transfers

- Key milestones
 - Application submitted
 - Completion of acceptance review
 - Federal Register Notice
 - *But* no need for No Significant Hazards Consideration (10 CFR 2.1315)
 - Order and Safety Evaluation issued
- Areas of review:
 - Financial qualifications
 - Technical qualifications
 - Insurance and Indemnity
 - Conforming Amendment
 - Decommissioning Funding
 - FOCD
 - State consultation
- Where LIC-107 is silent, generally can look to other guidance for how NRC will handle a transaction, such as NUREG-1556, Volume 15, Rev. 1

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NRC-FBI MOU: FIREARMS BACKGROUND CHECKS



**Ryan K.
Lighty**

Energy Policy Act of 2005

- Section 653 of the Energy Policy Act of 2005 amended the AEA by adding section 161A, “Use of Firearms by Security Personnel,” (42 U.S.C. § 2201a), which provided the NRC with new authority to permit NRC licensees and certificate holders to:
 - obtain weapons not previously permitted to be owned or possessed under NRC authority (“Enhanced Weapons Authority”); and
 - preempt state, local, and certain Federal firearms laws (including regulations) that prohibit the transfer, receipt, possession, transport, import, or use of one or more handguns, rifles, shotgun, short barreled shotgun, short-barreled rifle, machine gun, semiautomatic assault weapon, ammunition for such guns or weapons, or large capacity ammunition feeding devices provided that the Commission makes the determination required by section 161A.b. (“Preemption Authority”).



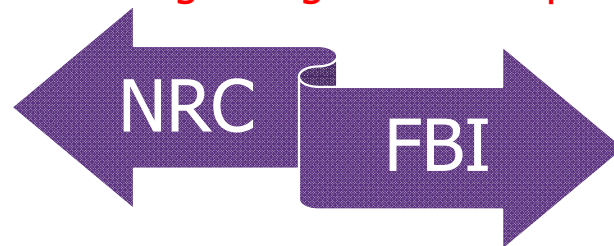
Firearms Guidelines

- A document known as the “Firearms Guidelines” provide direction to three Federal agencies (FBI, NRC, and ATF) on the implementation of Section 161A of the AEA.
 - Originally published Sept. 11, 2009 (74 Fed. Reg. 46,800)
 - Revision 1 published June 25, 2014 (79 Fed. Reg. 36,100)
- Under Section 161A of the AEA and Revision 1 to the Firearms Guidelines, security personnel whose official duties require access to covered weapons and who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee shall be subject to a **firearms background check**.



Memorandum of Understanding (May 17, 2017)

- On May 24, 2017, the NRC published a Federal Register notice announcing the issuance of an MOU between the FBI and the NRC regarding the accomplishment of firearms background checks on armed security personnel of NRC licensees.
 - “Implementation of Firearms Background Check Provisions Under Section 161A of the Atomic Energy Act of 1954, as amended,” 82 Fed. Reg. 23,849 (May 24, 2017).
- The MOU establishes and coordinates the **roles, responsibilities, and functions between the two agencies regarding the accomplishment of the firearms background checks.**



- The MOU addresses issues separate from and does not supersede three previous MOUs between the DOJ/FBI and the NRC:
 - “Cooperation Regarding Threat, Theft, or Sabotage in U.S. Nuclear Industry,” 44 Fed. Reg. 75,535 (Dec. 20, 1979);
 - “Nuclear Threat Incidents Involving NRC-Licensed Facilities, Materials, and Activities,” 65 Fed. Reg. 31197 (May 16, 2000); and
 - “Coordination of Enforcement Activities and Exchange of Information Between the NRC and the Department of Justice,” 53 Fed. Reg. 50317 (Dec. 14, 1988).

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EXPORT CONTROLS: E810



**Grant W.
Eskelsen**

10 CFR Part 810 Filing Requirements

- 57b.(2) of the Atomic Energy Act – “It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except . . . (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States.”
- DOE has promulgated 10 CFR Part 810, “Assistance to Foreign Atomic Energy Activities” as pathways to authorizations
- 10 CFR Part 810 Requires a number of submittals:
 - Application for specific authorization (10 CFR 810.9)
 - Renewals/amendments to specific authorization
 - Reports of specifically authorized activity (10 CFR 810.12(a) - (d))
 - Reports of generally authorized activity (10 CFR 810.12(e))
 - Notice of planned operational safety activities (10 CFR 810.6(c))
 - Requests for interpretation (10 CFR 810.5)

DOE Issues Notice of e810 Filing System

- “Notification of the Availability of ‘e810’ Electronic Database,” 82 Fed. Reg. 22,824 (May 18, 2017)
 - Part of Process Improvement Plan discussed during revisions to 10 CFR Part 810 from 2011 to 2015
 - Intended “to make the Part 810 authorization process more transparent, orderly, and efficient.”
- Can assist with filing of required communications
 - Provides update on tracking status of applications
- “Use of the e810 site for Part 810 communications is strictly optional: the email and paper communication options listed in 10 CFR 810.4 remain available.”

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RESEARCH & TEST REACTORS: NIST PRM



**Ryan K.
Lighty**

Proposed NPUF License Renewal Rule

- Proposed Rule: 82 Fed. Reg. 15,643 (Mar. 30, 2017)
- The proposed rule would:
 - 1) Eliminate license renewal for non-power production or utilization facilities (NPUFs) licensed under section 50.21(a) or (c), other than testing facilities;
 - 2) Define the license renewal process for NPUFs licensed under section 50.22 and testing facilities;
 - 3) Revise the timely renewal provision for NPUFs subject to license renewal;
 - 4) Require all NPUFs to submit updates to the final safety analysis reports every 5 years;
 - 5) Clarify other existing regulations applicable to NPUFs; and
 - 6) Establish accident dose criteria for NPUFs.

**NUCLEAR REGULATORY
COMMISSION**

10 CFR Parts 2, 50, and 51

[NRC-2011-0087]

RIN 3150-AI96

**Non-Power Production or Utilization
Facility License Renewal**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Proposed rule.

In essence: **non-expiring licenses** for non-commercial research & development reactors.

May 24, 2017 Public Meeting



Non-power Production or Utilization Facility (NPUF) License Renewal Proposed Rulemaking

May 24, 2017

- Under the proposed rule, testing facilities would continue to have fixed license terms that would require periodic license renewal.
 - Note: the AEA does not establish a fixed license term for testing facilities. However, they are subject to additional regulatory requirements (e.g., mandatory public hearings, ACRS review, environmental impact statements) due to higher power levels .
- The NRC queried whether a fixed license term was necessary for non-commercial testing facilities.
- Would require a technical basis to account for the higher risk of testing facilities relative to other NPUFs, including recommended criteria for establishing eligibility for a non-expiring license.

NIST Comment & Petition for Rulemaking

- The sole “testing facility” license issued by the NRC is held by the National Institute of Standards and Technology (NIST) (a non-regulatory research agency of the U.S. Department of Commerce), which operates the National Bureau of Standards Reactor at the NIST Center for Neutron Research in Gaithersburg, MD.
- On June 7, 2017, NIST petitioned the NRC to revise the definitions of “testing facility” and “research reactor”:
 - “to apply consistent risk-based criteria, including the 1 rem accident dose criterion proposed by NRC for research reactors.”
- NIST argues this action would “obviate the need for NRC to conduct further research to try to construct a technical basis for the arbitrary 10 MW(t) testing facility threshold issued more than a half-century ago.”

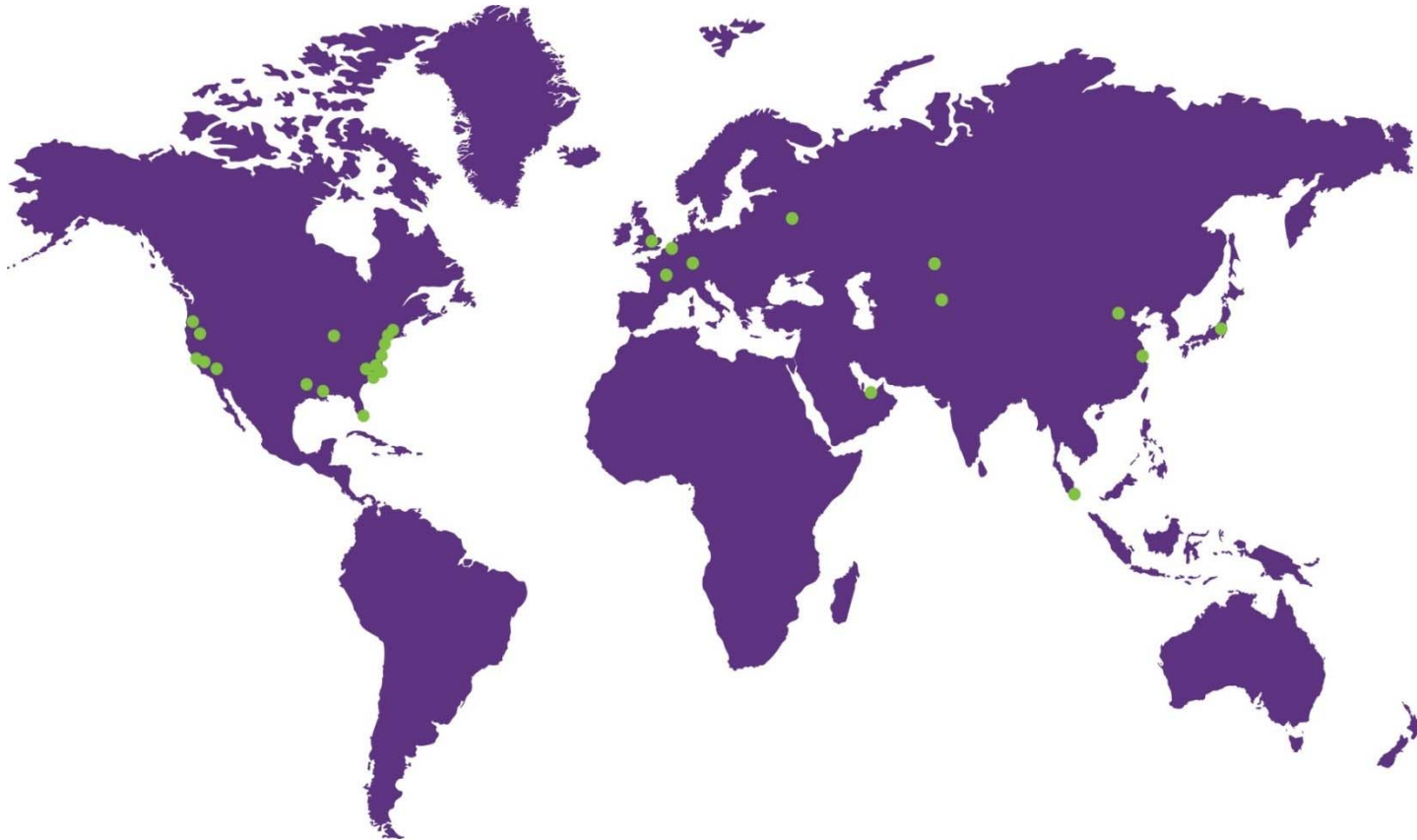


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THANK YOU

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