



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

June 12, 2023

By E-mail

[Lawyer]

[Address]

Dear [Lawyer]:

We write in response to your letter of March 24, 2023 (“March 24 Letter”), received by this office on May 10, 2023, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, as to whether your client, [Foreign Company], is obligated to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based on the representations you made in your request for an advisory opinion and the additional information provided in the documents attached to the March 24 Letter,¹ we conclude that [Foreign Company] is not obligated to register under FARA at this time.

Background

The March 24 Letter represents that [Foreign Company] is a [redacted] corporation, headquartered in [City], that is heavily involved in [text redacted]. The letter states that on [date redacted], President Biden published a Presidential Determination stating [a national priority].² The March 24 Letter further notes that in response to the Presidential Determination, [Program] was initiated to address the national priority through existing authorities and invited private sector participation]. The March 24 Letter represents that [Foreign Company] sought to participate in the Program. To that end, on September 13, 2022, a [Foreign Company] representative attended a webinar presented by [redacted] official with responsibility for the Program.

The March 24 Letter represents that aspiring participants in the Program were encouraged to contact the director of the Program. Thereafter, a representative hired by [Foreign Company] engaged in conversation with the Program’s director, during which the [Foreign Company] representative requested further information about the Program and discussed [Foreign Company’s] ability to [effectively participate in the Program]. The March 24 Letter further recounts that prospective participants in the Program were directed to submit their proposals directly to [U.S. Government Agency], bypassing the generalized U.S. government application portal. [U.S. Government Agency] required Program participants to submit [information relating to their proposals]. In response to this requirement, [Foreign Company] submitted [redacted] on [date redacted].

On January 10, 2023, [Foreign Company’s] representative exchanged emails with a [U.S. Government official] about [U.S. Government Agency’s] evaluation process with respect to the [redacted] [U.S. Government Agency] receives pursuant to the Program. According to the March

¹ The additional documents attached to the March 24 Letter include: [Redacted].

² [Redacted].

[Lawyer]
June 12, 2023

24 Letter, [Foreign Company's] representative remains involved in the Program on behalf of [Foreign Company]. The March 24 Letter denies that [Foreign Company] and/or its representative is involved in any lobbying activity that could trigger an obligation to register under FARA.

You ask, in the March 24 Letter, whether [Foreign Company] and/or its representative has an obligation to register under FARA. Based on the facts you provided, we assess that [Foreign Company] and its representative do not have an obligation to register at this time.

FARA Analysis

FARA is a disclosure statute which, absent specific exemptions, requires the registration of agents of foreign principals who are engaged in specified activities under the Act. The term "foreign principal" is defined under the Act to include "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 22 U.S.C. § 611(b)(3). Based on the facts provided, [Foreign Company], a [foreign] corporation headquartered in [city], qualifies as a foreign principal under FARA.

Under the Act, in the absence of an applicable exemption, a party is an "agent of a foreign principal" that must register under FARA if it acts

as an agent, representative, employee, or servant, or . . . acts in any other capacity at the order, request, or under the direction or control, of a foreign principal . . . and who directly or through any other person . . . (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.]

According to the representations in the March 24 Letter, [Foreign Company], through its representative, has interacted and will be interacting with DoD officials in furtherance of [Foreign Company's] application to supplying needed [redacted] to the United States. It appears, therefore, that absent an exemption, [Foreign Company] qualifies as an agent of a foreign principal³ required to register under FARA.

Section 613(d) of FARA provides, in relevant part, that an agent of a foreign principal may be exempt from FARA's registration requirements if it engages "only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal." 22 U.S.C. § 613(d)(1). Section 5.304(a) of the FARA Regulations further clarifies this language: "As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind."

According to the description of [Foreign Company's] business activities provided in the March 24 Letter, [Foreign Company] is pursuing sales of [Redacted] to the United States in furtherance of [Foreign Company's] business interests. Moreover, the March 24 Letter

³ Under FARA's implementing regulations, a person can be both an agent of a foreign principal required to register and a foreign principal simultaneously. See 28 C.F.R. § 5.100(a)(8) (defining the term "foreign principal" to include a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal).

[Lawyer]
June 12, 2023

affirmatively represents that [Foreign Company] and its representative have not and do not intend to engage in lobbying or other political activities.⁴ Therefore, we assess that [Foreign Company's] engagement with [U.S. Government Agency] is of a private and nonpolitical nature and that [Foreign Company's] activities thus qualify for the "commercial exemption" outlined in Section 613(d) of the Act.

Please note that this advisory opinion is based solely upon the facts and representations set forth in the March 24 Letter and attachments. Our determination must be revisited in the event that any of the facts or circumstances previously described to us change. In the event that occurs, please inform us so we may assess whether there is a registration obligation.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact the FARA Unit at (202) 233-0776 or FARA.Public@usdoj.gov if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

⁴ FARA defines "political activities" as "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party[.]"