

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994-AA02

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOE proposes to amend its regulation concerning unclassified assistance to foreign atomic energy activities. This regulation provides that persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States must be authorized to do so by the Secretary of Energy (Secretary). The proposed revisions update and clarify several provisions in the current regulation, and identify information applicants are required to submit in support of applications for an authorization under this part. The revisions are intended to reduce uncertainties for industry users concerning which foreign nuclear-related activities by U.S. persons are “generally authorized” under the regulation and which activities require a “specific authorization” from the Secretary. In this regard, one proposed organizational change is the listing of countries and territories for which a general authorization for foreign atomic energy activities is available. This proposed change contrasts with the current regulation, which lists those countries for which a specific authorization to conduct such activities is required. Unclassified nuclear activities are generally authorized with respect to these listed countries if they do not involve “sensitive nuclear technology” as defined in the regulation. Conversely, the proposed revised regulation specifically identifies those assistance activities and technologies under DOE’s jurisdiction,

the export of which requires a specific authorization from the Secretary. Additionally, DOE is proposing to add regulations to address “deemed exports.” Companies seeking to employ foreign nationals in positions involving a proposed transfer of technology are provided information on the documentation required to be submitted to request specific authorization for those transfers. Finally, DOE proposes to update its regulations in this area to reflect terminological and other changes in nuclear technology since the last major update in 1986. Finally, points of contact references have been updated to reflect the current DOE organizational structure.

DATES: Written comments must be postmarked on or before November 7, 2011 to ensure consideration.

ADDRESSES: You may submit comments, identified by RIN 1994-AA02, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail:* Part810.NOPR@hq.doe.gov. Include RIN 1994-AA02 in the subject line of the message.

3. *Mail:* Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA 24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Due to potential delays in DOE’s receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994-AA02. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA 24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202-586-0589; Janet Barys or Elliot Oxman, Office of the General Counsel, GC-53, Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585, telephone 202-586-3429 (Ms. Barys) or 202-586-1755 (Mr. Oxman); or Katie Strangis, National Nuclear Security Administration, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202-586-8623.

SUPPLEMENTARY INFORMATION:

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I. Background

DOE’s regulation in 10 CFR part 810 implements section 57b. of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C 2077(b)). The statute provides that it “shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except (1) As specifically authorized under an agreement for cooperation made pursuant to section 123 * * * or (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. * * *”

Part 810 regulates the export of unclassified nuclear technology and assistance, to facilitate international commerce while at the same time protecting against the spread of nuclear technologies and material that would be contrary to the nonproliferation and other national security interests of the United States. More specifically, the purposes of the part 810 regulation are: (1) To enable DOE to control the export of nuclear technologies and services while protecting the interest of, and advancing, U.S. nonproliferation and other national security objectives; (2) to facilitate such exports by identifying nuclear technology and related

assistance activities that can be “generally authorized” by the Secretary and thus require no further authorization under part 810; (3) to identify the specific transfers of assistance and technology which require specific authorization by the Secretary; (4) to explain how to request a specific authorization from the Secretary; and (5) to identify the reporting requirements for activities subject to part 810.

The part 810 regulation has not been comprehensively updated since 1986. Some of the terminology contained in the current regulation has become inconsistent with guidelines issued by the Nuclear Suppliers Group (NSG), an international group of nuclear supplier countries, including the United States, which seeks to promote the nonproliferation of nuclear weapons through the implementation of guidelines for nuclear exports. The existing part 810 regulation also contains certain technical references and definitions that do not reflect current science, and other terms and references whose inclusion in the regulation is no longer necessary.

II. Description of Proposed Changes

DOE is publishing this notice of proposed rulemaking (NOPR) to clarify the regulatory restrictions and requirements pertaining to unclassified atomic energy assistance, and nuclear technology transfers, to foreign destinations. The proposed changes would update some of the definitions used in the regulation; identify countries and territories as to which a “general authorization” applies; and identify the activities subject to a “specific authorization”. Additionally, the proposed rule would: (1) Make clear what types of technology transfers, which can include either technical data or technical assistance, fall within the scope of the regulation; (2) provide for added technical clarity of certain terms and technology; (3) revise, delete, and add definitions for certain terms contained in the regulation; (4) identify the information required to be provided by applicants for a part 810 authorization, including requests for authorization of “deemed exports”; and (5) update points of contact information to reflect current Departmental organizational structure and office designations.

The proposed changes to part 810 are summarized below in the order in which they appear:

1. The proposed changes to § 810.1 “Purpose” would state the statutory basis for the regulation and clarify the purpose and authorization requirements.

2. The proposed changes to paragraphs (a) and (b) in § 810.2 “Scope” are intended to state explicitly DOE’s jurisdiction under section 57 b. of the Atomic Energy Act with regard to unclassified nuclear export activities by U.S. persons that include assistance and transfer of technology abroad and to foreign nationals employed by U.S. companies, whether the subject activities are conducted in the United States or abroad by U.S. persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control. Proposed § 810.2(c) would retain the exemptions for all exports licensed by the Nuclear Regulatory Commission; and would exempt “public information” and “basic scientific research” as those terms are proposed to be defined in § 810.3. Additionally, proposed § 810.2(c) would make clear the exclusion from the scope of the part 810 regulation of uranium and thorium mining and milling and nuclear fusion reactors when not used in support of systems involving hydrogen isotope separation. The proposed addition of these two exemptions is intended to clarify that activities related to uranium and thorium mining and milling and nuclear fusion reactors, per se, are not within the scope of part 810.

3. In proposed § 810.3 “Definitions”, a number of new definitions are proposed to reflect terminological changes and technological developments since the part 810 regulation was last updated (in 1986), and to provide additional clarity to certain terms currently defined and used in the regulation. For example, the definition of “accelerator-driven subcritical assembly” would be replaced with “production accelerator-driven subcritical assembly system”; the terms “non-nuclear-weapon state”, “operational safety” and “subcritical assembly” are proposed to be deleted from the current definitions. The proposed rule would also add new and revised definitions: “basic scientific research,” “cooperative enrichment enterprise”, “enrichment,” “fissile material”, “production accelerator”, “production accelerator-driven subcritical assembly system”, “production subcritical assembly”, “reprocessing”, “specific authorization”, “specifically authorized nuclear activities”, “technology” (including “development” and “production”), “technical assistance”, “technical data”, and “use”. Definitions are also proposed to be added for “DOE” and “Secretary”.

4. Proposed §§ 810.4 “Communications” and 810.5

“Interpretations” would be changed to identify the responsible office under the current Departmental organizational structure to which applications, questions, or requests should be addressed. This proposed revision is intended to ensure that part 810-related correspondence will be directed appropriately and help facilitate prompt responses to those applications, questions, or other requests.

5. The current § 810.6 “Authorization requirement” quotes section 57 b. of the Atomic Energy Act. This notice proposes to delete the quotation, and to address the statutory basis instead in the “Authority” section of the preamble and proposed § 810.1 “Purpose”.

6. Proposed § 810.6 “Generally Authorized Activities”—currently § 810.7, re-numbered § 810.6 in the proposed rule—would identify activities that are generally authorized by the Secretary, and the countries and territories to which general authorizations apply. Section 810.6(a) would identify generally authorized activities. Section 810.6(b) would identify the countries and territories, and facilities therein, that would qualify for a general authorization. The current § 810.7 (b) “furnishing public information” would be deleted from the list of generally authorized activities and would be included in proposed § 810.2, as exempt from the scope of this part. Current § 810.7(c) would be deleted. The “fast track” safety general authorization has rarely been used, and has proved confusing to applicants. In summary, the proposed § 810.6 would identify the activities, countries, territories, destinations, and facilities to which the general authorization is applicable.

7. Proposed § 810.7 Activities requiring specific authorization. This proposed section, renumbered from § 810.8, would be modified to indicate that, unless an activity is generally authorized under proposed § 810.6, a specific authorization from the Secretary would be required before engaging directly or indirectly in the production of special nuclear material outside the United States. The current regulation in § 810.2 (a) provides a broad general authorization for all activities not requiring a specific authorization as described in § 810.8.

8. Proposed § 810.8 Restrictions on general and specific authorization. The present restrictions, currently in § 810.9, would remain unchanged.

9. Proposed § 810.9 “Grant of specific authorization”—currently § 810.10—would add a new paragraph (b) to establish a time limit on all specific authorizations. Each specific

authorization approved by the Secretary is proposed to be limited to a period of up to five years. This proposal is intended to ensure that U.S. persons granted specific authorizations from the Secretary keep DOE informed of their activities and planned nuclear technology transfers, and to facilitate DOE's ability to confirm the adherence of those activities to U.S. nonproliferation policy. Additionally, language would be included in proposed § 810.9(b) identifying the factors, consonant with U.S. international nonproliferation commitments, considered by the Secretary in granting a specific authorization. Proposed § 810.9(c) would be expanded to provide clarity to applicants that request a specific authorization to transfer sensitive nuclear technology as defined in proposed § 810.3. In addition to the current requirements of sections 127 and 128 of the Atomic Energy Act, the proposed regulation lists criteria, relevant to U.S. nonproliferation policy and international commitments, that would be considered in determining whether to authorize an export involving sensitive nuclear technology. A new paragraph (d) is proposed to be added, concerning requests to engage in foreign atomic energy assistance activities related to the enrichment of fissile material (as defined in proposed § 810.3). The proposed provision is designed to facilitate U.S. conformity to the Nuclear Suppliers Group Guidelines.

10. The current § 810.11 is proposed as § 810.10 Revocation, suspension, or modification of authorization. Proposed § 810.10(c) would add the phrase "or technology transfer" after the words "authorized assistance."

11. The current § 810.12 is proposed as § 810.11, Information required in an application for specific authorization, and would be expanded to add more detail about the information required for DOE to process a specific authorization request, including applications for "deemed export" authorization. Section 810.11(a) would require the submission of the same information required by the current regulation (§ 810.12(a)). Proposed paragraph (b) would solicit any information the applicant wishes to provide concerning the factors listed in proposed § 810.9(b). Proposed paragraph (c) would address the required content for applications filed by U.S. companies seeking to employ, and to accord access to nuclear technology subject to this part by, foreign nationals with temporary, student, or immigrant visa status in the United States. This proposed section is

intended to address situations comparable to those covered by the "deemed export" rule in 15 CFR 734.2(b)(2) of the Commerce Department's Export Administration Regulations. Under this proposal, no part 810 specific authorization would be required if the foreign national employee (or prospective employee) is lawfully admitted for permanent residence in the United States, or is a protected individual under the Immigration and Nationalization Act (8 U.S.C. 1324b(a)(3)). As proposed, the part 810 regulation would make explicit DOE's current practice of requiring an applicant to provide detailed information concerning the nationality, visa status, educational background, and employment history of each foreign national to whom the applicant seeks to grant access to technology subject to the part 810 regulation. In addition, the applicant must provide a description of the subject technology, a copy of any confidentiality agreement between the U.S. company employer and the foreign national, and written nonproliferation assurances by the foreign national. Finally, proposed paragraph (d) would identify the information required to be submitted by an applicant seeking a specific authorization to engage in foreign atomic energy assistance activities related to the enrichment of fissile material.

12. The current §§ 810.13, 810.14, and 810.15 would be renumbered as proposed § 810.12 Reports, proposed § 810.13 Additional information, and proposed § 810.14 Violations. A proposed addition in § 810.12(g) would allow DOE to require companies granted authorizations under part 810 to submit certain reports to DOE, to include information required by U.S. law concerning specific nuclear activities or specific countries exports to which require a specific authorization.

Because DOE is making changes to most sections of part 810, it is publishing the entire part 810 for public comment.

III. Public Comment Procedures

Interested persons are invited to participate by submitting data, views, or arguments. Written comments should be submitted to the address indicated in the ADDRESSES section of this notice. All comments submitted in writing or in electronic form may be made available to the public in their entirety. Personal information such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. Comments will be available for public inspection in the DOE Freedom of Information Act Reading

Room (1E-190), 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Members of the public who wish to review the comments submitted should contact Alexander Morris, FOIA Officer, at (202) 586-3159. Comments made on this rulemaking will also be posted on <http://www.regulations.gov>. Written comments received by the date indicated in the DATES section of this notice of proposed rulemaking will be addressed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information and to treat it in accordance with its determination. See 10 CFR 1004.11.

IV. Regulatory Review

A. Executive Order 12866

This proposed rule has been determined to not be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to subpart D, 10 CFR part 1021, categorical exclusion A5, which applies to a rule or regulation that interprets or amends an "existing rule or regulation that does not change the environmental effect of the rule or regulation being amended." Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published

procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule offers clarity on regulatory restrictions and requirements pertaining to unclassified assistance to foreign atomic energy activities; it does not expand the scope of activities currently regulated under 10 CFR part 810.

The proposed changes to the preamble of part 810 and § 810.1 reposition (to the "Authority" section, above) and update statutory citations, and clarify the purpose statement. There is no change that will impact small businesses or the review time necessary to prepare or submit requests for authorization.

Section 810.2 is proposed to be expanded to provide further detail on the scope of activities that are subject to part 810. As a consequence, more information will be available to small businesses as they formulate their business strategies. These changes should assist small businesses to determine which nuclear export activities undertaken with foreign parties require authorization under this part. This additional information should reduce the time required to identify activities that are controlled by part 810, and also lessen the costs associated with developing documentation to support applications for authorization.

Section 810.3, Definitions, is proposed to be updated to reflect changes in technology and to provide additional clarity. Specifically, for example, the definition of "accelerator-driven subcritical assembly" would be replaced with "production accelerator-driven subcritical assembly system"; and the terms "non-nuclear-weapon state" and "operational safety and subcritical assembly" would be deleted from the regulation. New and revised definitions would be added: "basic scientific research", "cooperative enrichment enterprise", "DOE", "enrichment", "fissile material", "production accelerator-driven subcritical assembly system", "production subcritical assembly", "reprocessing", "Secretary", "specific authorization", "specifically authorized nuclear activities", "technology", "technical assistance", "technical data",

and "use". These definitional updates and additions would not change the scope of the activities controlled under this part. Rather, the new and revised definitions should provide greater clarity to small businesses, decrease the time for small businesses to evaluate activities for implications of this regulation, and also lessen the costs associated with developing documentation to support their applications for authorization.

Section 810.4 and § 810.5 are proposed to be changed to reflect the current organizational structure of the DOE office responsible for administering part 810, and should not impact small businesses. The proposed revision will help ensure that correspondence is directed appropriately and expedite application processing time. Section 810.6 would be deleted. It quotes the provisions of section 57 b. of the Atomic Energy Act of 1954 and is not required for the text of the regulation. Its deletion would require an applicant to consult a source outside part 810 to locate the statutory text of section 57 b.

Sections 810.7, Generally authorized activities, and 810.8, Activities requiring specific authorization, would be revised and renumbered as §§ 810.6 and 810.7, respectively. The revised text of § 810.6 would provide more detail concerning activities that are generally authorized by the Secretary, and identify countries and territories, and facilities therein, to which general authorizations apply. The proposed change should only impact small businesses positively. Providing this clarification concerning activities that are generally authorized would assist small businesses to determine when they need to submit a request for specific authorization, as stated in proposed § 810.7. Paragraphs (a) and (g) of current § 810.7 would be deleted because the regulation does not control public information; therefore a general authorization is not necessary. The substance of paragraph (b) of the current § 810.7 would be retained and renumbered as § 810.6(b)(2). The current § 810.7(c) would be deleted from the text. This "fast track" safety general authorization has been used only once, by a large corporation, to address an imminent threat to the public after an earthquake.

New § 810.8, Restrictions on general and specific authorizations, would continue the same restrictions as are contained in the current part 810, and therefore would not add any new burdens on small businesses. New § 810.9, grant of specific authorization, is proposed to outline the process for

applying for a specific authorization. Paragraph (a) would provide updated information on the current DOE organizational structure. Paragraph (b) would retain identification of the other U.S. departments and agencies (the Departments of State, Defense, and Commerce, and the Nuclear Regulatory Commission) that review part 810 authorization requests; it would also include a time limit on specific authorizations, and revise and add factors DOE would consider in making an authorization determination. The five-year maximum period has been a matter of DOE practice for a number of years; it is now being proposed to be added to the regulation to provide clarity to companies applying for a specific authorization. Paragraph (b) would be expanded to provide additional information to U.S. companies that request a specific authorization to transfer sensitive nuclear technology. This change should provide useful information to applicants, but not create additional requirements or negatively impact a small business applying for a specific authorization. A new paragraph (c) is proposed, concerning activities related to the enrichment of fissile material; and has been added to facilitate U.S. conformity to the Nuclear Suppliers Group Guidelines. Although satisfaction of the requirements of this proposal would require more effort by an applicant, it is unlikely that a small business would engage in foreign atomic energy activities involving the enrichment of fissile material.

New § 810.10, Revocation, suspension, or modification of authorizations, has minimal proposed updates, and is intended to provide greater clarity. New § 810.11, Information required in an application for specific authorization, would be expanded to add more detail about the information required to process an authorization, including a "deemed export" authorization. The revisions to this section would provide additional, and more specific, information concerning the matters required to be addressed in an application, thus making the application process clearer to small businesses. Adoption of this proposed revision should positively impact the amount of time and resources a small business would have to devote to the application process, without adding any new requirements for small businesses and also decreasing the processing time for the application within the Department. New § 810.11 would also require an applicant to provide information concerning

activities related to the enrichment of fissile materials. As noted, it is unlikely that a small business would engage in foreign atomic energy assistance activities of this nature.

New § 810.12, Reports, would be updated with the correct DOE organizational structure, with no adverse impact on small businesses. The proposed changes to §§ 810.13 and 810.14 are minimal, and should impose no increased burden on applicants.

In practice, the requirements for small businesses exporting nuclear technology would not substantively change because the proposed revisions to this rule do not impact sections of the rule containing those requirements or add new burdens or duties to small businesses. The obligations of any person subject to the jurisdiction of the United States who engages directly or indirectly in the production of special nuclear material outside the United States would not change in a manner that would have any impact on small businesses.

Furthermore, DOE has conducted a review of the potential small businesses that may be impacted by this proposed rule. This review consisted of an analysis of the number of businesses impacted generally since 2007–2008, and a determination of which of those are considered “small businesses” by the Small Business Administration. Approximately 90% of the businesses impacted by this rule are not considered small businesses (out of 56 businesses examined, 5 qualify as small businesses). Additionally, the number of requests for authorization or reports of generally authorized activities from each small business on average was one or fewer per year, while larger companies had as many as 100 requests for authorization or reports of generally authorized activities per year. The latter businesses fall within two North American Industry Classification System codes, for engineering services and computer systems designs services. Often, their requests for authorization include the transfer of computer codes or other similar products. The proposed changes to this rule would not alter whether these businesses do or do not receive authorization under part 810, thus not adversely affecting their ability to conduct business in the same manner they do at present. Moreover, they will benefit from a clarified request process. Generally, small businesses reported that their initial filing of a part 810 request for authorization required up to 40 hours of legal assistance, but follow-on reporting and requests required significantly less such assistance.

On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The proposed rule would not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

This proposed rule would not impose a Federal mandate on State, local, or tribal governments or on the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations

Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires

Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of this proposed rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 17, 2011.

Steven Chu,
Secretary of Energy.

For the reasons stated in the preamble, DOE proposes to amend title 10 of the Code of Federal Regulations by revising part 810 to read as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

- Sec.
- 810.1 Purpose.
 - 810.2 Scope.
 - 810.3 Definitions.
 - 810.4 Communications.
 - 810.5 Interpretations.
 - 810.6 Generally authorized activities.
 - 810.7 Activities requiring specific authorization.
 - 810.8 Restrictions on general and specific authorization.
 - 810.9 Grant of specific authorization.
 - 810.10 Revocation, suspension, or modification of authorization.
 - 810.11 Information required in an application for specific authorization.
 - 810.12 Reports.
 - 810.13 Additional information.
 - 810.14 Violations.
 - 810.15 Effective date and savings clause.

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93-438; sec. 301, Department of Energy Organization Act, Pub. L. 95-91; National Nuclear Security Administration Act, Pub. L. 106-65, 50 U.S.C. 2401 *et seq.*, as amended.

§ 810.1 Purpose.

These regulations implement section 57 b. of the Atomic Energy Act, which empowers the Secretary, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission (NRC), the Department of Commerce, and the Department of Defense, to authorize persons subject to the jurisdiction of the United States to engage directly or indirectly in the production of special nuclear material outside the United States. The purpose of the regulations in this part is to:

(a) Identify activities that are generally authorized by the Secretary

and thus require no other authorization under this part;

(b) Identify activities that require specific authorization by the Secretary and explain how to request authorization; and

(c) Specify reporting requirements for activities subject to this part.

§ 810.2 Scope.

(a) This part applies to:

(1) All persons subject to the jurisdiction of the United States (hereinafter "U.S. persons") who or that engage directly or indirectly in the production of special nuclear material outside the United States, by transferring to foreign persons technology that is related to the production of special nuclear material; and

(2) Assistance and the transfer of technology by U.S. persons to foreign persons, conducted either in the United States or abroad by U.S. persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility, or control.

(b) The activities referred to in paragraph (a) of this section involve the following:

(1) Chemical conversion and purification of uranium and thorium from milling plant concentrates and in all subsequent steps in the nuclear fuel cycle;

(2) Chemical conversion and purification of plutonium and neptunium;

(3) Nuclear fuel fabrication, including preparation of fuel elements, fuel assemblies and cladding thereof;

(4) Uranium isotope separation (uranium enrichment), plutonium isotope separation, and isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;

(5) Nuclear reactors;

(6) Accelerator-driven subcritical assembly systems, specially designed or intended for plutonium or uranium-233 production;

(7) Hydrogen isotope separation and heavy water production;

(8) Reprocessing of irradiated nuclear materials or targets containing special nuclear material;

(9) Changes in form or content of irradiated nuclear materials containing special nuclear material, and hot cell facilities;

(10) Storage of irradiated nuclear materials;

(11) Processing of high level radioactive waste;

(12) Movement of irradiated nuclear materials, including specially designed containers therefor;

(13) The transfer of technology for the development, production, or use of equipment or material specially designed or prepared for any of the above listed activities. (*See* NRC regulations under 10 CFR part 110, Appendix A through Appendix K) for an illustrative list of items considered to be specially designed or prepared for certain listed nuclear activities.); and

(14) Other activities related to the production of special nuclear material outside the United States as the Secretary may determine, notice of which shall be published in the **Federal Register**.

(c) This part does not apply to:

- (1) Exports licensed by the NRC;
- (2) Public information or basic scientific research;
- (3) Uranium and thorium mining and milling; and
- (4) Nuclear fusion reactors per se, except for supporting systems involving hydrogen isotope separation.

§ 810.3 Definitions.

As used in this part 810:

Agreement for cooperation means an agreement with another nation or group of nations concluded under sections 123 or 124 of the Atomic Energy Act.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended.

Basic scientific research means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena and observable facts, not primarily directed towards a specific practical aim or objective.

Classified information means national security information classified under Executive Order 13526 or any predecessor or superseding order, or Restricted Data classified under the Atomic Energy Act.

Cooperative enrichment enterprise means a multi-country or multi-company (where at least two of the companies are incorporated in different countries) joint development or production effort. The term includes a consortium of countries or companies or a multi-national corporation.

DOE means the U.S. Department of Energy.

Enrichment means isotope separation of uranium or isotope separation of plutonium, regardless of the type of process or separation mechanism used.

Fissile material means isotopes that readily fission after absorbing a neutron of any energy, either fast or slow. Fissile materials are uranium-235, uranium-233, plutonium-239, and plutonium-241.

Foreign national means an individual who is not a citizen or national of the United States.

Foreign person means a person other than a U.S. person.

General authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act to provide assistance to foreign atomic energy activities subject to this part 810 and which does not require a request for, or the Secretary's issuance of, a specific authorization.

IAEA means the International Atomic Energy Agency.

NNPA means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, 22 U.S.C. 3201 *et seq.*

NPT means the Treaty on the Non-Proliferation of Nuclear Weapons, done on July 1, 1968.

Nuclear reactor means an apparatus, other than a nuclear explosive device, designed or used to sustain nuclear fission in a self-supporting chain reaction.

Open meeting means a conference, seminar, trade show, or other gathering that all technically qualified members of the public may attend and at which they may make written or other personal record of the proceedings, notwithstanding that—

- (1) A reasonable registration fee may be charged; or
- (2) A reasonable numerical limit exists on actual attendance.

Person means—

(1)(i) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than DOE, or any State or political entity within a State; and

(ii) Any legal successor, representative, agent, or agency of the foregoing.

(2) Persons under U.S. jurisdiction are responsible for their foreign licensees, contractors, or subsidiaries to the extent that the former have control over the activities of the latter.

Production accelerator means a particle accelerator specially designed, used, or intended for use with a production subcritical assembly.

Production accelerator-driven subcritical assembly system means a system comprised of a production subcritical assembly and a production accelerator and which is specially designed, used, or intended for the production of plutonium or uranium-233. In such a system, the production accelerator target provides a source of neutrons used to effect special nuclear material production in the production subcritical assembly.

Production reactor means a nuclear reactor specially designed or used

primarily for the production of plutonium or uranium-233.

Production subcritical assembly means an apparatus that contains source material or special nuclear material to produce a nuclear fission chain reaction that is not self-sustaining and that is specially designed, used, or intended for the production of plutonium or uranium-233.

Public information means:

(1)(i) Information available in periodicals, books, or other print or electronic media for distribution to any member of the public, or to a community of persons such as those in a scientific, engineering, or educational discipline or in a particular commercial activity who are interested in a subject matter;

(ii) Information available in public libraries, public reading rooms, public document rooms, public archives, or public data banks, or in university courses;

(iii) Information that has been presented at an open meeting (see definition of "open meeting");

(iv) Information that has been made available internationally without restriction on its further dissemination; or

(v) Information contained in an application that has been filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184 or that has been made available under 5 U.S.C. 552, the Freedom of Information Act.

(2) Public information must be available to the public prior to, or at the same time as, it is transmitted to a foreign recipient. It does not include any technical embellishment, enhancement, explanation or interpretation that in itself is not public information, or information subject to sections 147 and 148 of the Atomic Energy Act.

Reprocessing means a process or operation, the purpose of which is to extract radioactive isotopes from irradiated source and special nuclear materials for further use.

Restricted Data means all data concerning:

(1) Design, manufacture, or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act.

Secretary means the Secretary of Energy.

Sensitive nuclear technology means any information (including information incorporated in a production or utilization facility or important component part thereof) that is not available to the public (see definition of "public information") which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

Source material means:

- (1) Uranium or thorium, other than special nuclear material; or
- (2) Ores that contain by weight 0.05 percent or more of uranium or thorium, or any combination of these materials.

Special nuclear material means:

- (1) Plutonium;
- (2) Uranium-233; or
- (3) Uranium enriched above 0.711 percent by weight in the isotope uranium-235.

Specific authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act, in response to an application filed under this part, to engage in specifically authorized nuclear activities subject to this part.

Specifically authorized nuclear activities means the provision of assistance, including the transfer of technology, to foreign persons related to:

- (1) Uranium isotope separation (uranium enrichment), plutonium isotope separation, or isotope separation of any other elements (including stable isotope separation) when the technology or process can be applied directly or indirectly to uranium or plutonium;
- (2) Fabrication of nuclear fuel containing plutonium, including preparation of fuel elements, fuel assemblies, and cladding thereof;
- (3) Hydrogen isotope separation and heavy water production;
- (4) Production accelerator-driven subcritical assembly systems;
- (5) Production reactors; and
- (6) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material.

Technology means specific information required for the development, production, or use of any facility or activity listed in § 810.2(c). This information may take the form of technical data or technical assistance.

- (1) *Development* is related to all phases before production such as:

- (i) Design;
- (ii) Design research;
- (iii) Design analysis;
- (iv) Design concepts;
- (v) Assembly and testing of prototypes;
- (vi) Pilot production schemes;
- (vii) Design data;
- (viii) Process of transforming design data into a product;
- (ix) Configuration design;
- (x) Integration design; and
- (xi) Layouts.

(2) *Production* means all production phases such as:

- (i) Construction;
- (ii) Production engineering;
- (iii) Manufacture;
- (iv) Integration;
- (v) Assembly or mounting;
- (vi) Inspection;
- (vii) Testing; and
- (viii) Quality assurance.

Technical assistance means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance as determined by the Secretary. Technical assistance may involve transfer of technical data.

Technical data means data in such forms as blueprints, plans, diagrams, models, formulae, engineering designs, specifications, manuals, and instructions written or recorded on other media or devices such as disks, tapes, read-only memories, and computational methodologies, algorithms, and computer codes that can directly or indirectly affect the production of special nuclear material.

Use means operation, installation (including on-site installation), and maintenance (checking), repair, overhaul, and refurbishing.

United States, when used in a geographical sense, includes all territories and possessions of the United States.

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and International Security (NA 24), Telephone (202) 586-0589.

(b) Communications also may be delivered to DOE's headquarters at 1000 Independence Avenue, SW., Washington, DC. All clearly marked proprietary information will be given the maximum protection allowed by law.

§ 810.5 Interpretations.

(a) The advice of the DOE Office of Nonproliferation and International Security may be requested on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.6, or requires specific authorization under § 810.7. However, unless authorized by the Secretary in writing, no interpretation of the regulations in this part other than a written interpretation by the DOE General Counsel is binding upon DOE.

(b) When advice is requested from the DOE Office of Nonproliferation and International Security, or a binding, written determination is requested from the DOE General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the reason for the delay.

§ 810.6 Generally authorized activities.

(a) In accordance with section 57 b.(2) of the Atomic Energy Act, the Secretary has determined that activities by U.S. persons that involve engaging directly or indirectly in the production of nuclear material outside the United States, including by providing assistance or transferring technology in ways that do not involve specifically authorized nuclear activities, are generally authorized to be undertaken with respect to the IAEA and the countries and territories, and facilities therein, identified in paragraphs (b)(1) through (5) of this section, provided that no sensitive nuclear technology is transferred.

(b) The activities described in paragraph (a) of this section are generally authorized with respect to the IAEA and:

(1) The following countries and territories, and the facilities in such countries or territories:

Argentina,
Australia,
Austria,
Bangladesh,
Belgium,
Brazil,
Bulgaria,
Canada,
Colombia,
Cyprus,
Czech Republic,
Denmark,
Egypt,
Estonia,
Finland,
France,
Germany,
Greece,
Hungary,
Indonesia,
Ireland,
Italy,
Japan,

Kazakhstan,
Latvia,
Lithuania,
Luxembourg,
Malta,
Morocco,
Netherlands,
Norway,
Peru,
Poland,
Portugal,
Korea, Republic of
Romania,
Slovakia,
Slovenia,
South Africa,
Spain,
Sweden,
Switzerland,
Taiwan,
Thailand,
Turkey,
Ukraine,
United Arab Emirates,
United Kingdom.

(2) Any safeguarded facility in order to prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population and that cannot be met by other means, provided DOE is notified in writing in advance and does not object;

(3) Any country or territory, if carried out in the course of implementation of the Agreement between the United States of America and the IAEA for the Application of Safeguards in the United States;

(4) Any country or territory, if carried out in the course of participation in exchange programs approved by the Department of State in consultation with DOE;

(5) Any country or territory, if carried out by persons, other than experts and consultants who are full-time employees of the IAEA, whose employment is sponsored by the U.S. Government.

§ 810.7 Activities requiring specific authorization.

Unless generally authorized by § 810.6, a U.S. person requires specific authorization by the Secretary before engaging directly or indirectly in the production of special nuclear material outside the United States.

§ 810.8 Restrictions on general and specific authorization.

A general or specific authorization granted by the Secretary under this part:

(a) Is limited to activities involving only unclassified information and does not permit furnishing Restricted Data or other classified information;

(b) Does not relieve a person from complying with relevant laws or the regulations of other Government agencies applicable to exports;

(c) Does not authorize a person to engage in any activity when the person knows or has reason to know that the activity is intended to provide assistance in designing, developing, fabricating, or testing a nuclear explosive device.

§ 810.9 Grant of specific authorization.

(a) An application for authorization to provide assistance or transfer technology for which specific authorization is required under § 810.7 should be made to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, *Attention: Senior Policy Advisor, Office of Nonproliferation and International Security (NA 24).*

(b) The Secretary will approve an application for specific authorization if it is determined, with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, that the activity will not be inimical to the interest of the United States. Each application approved for specific authorization generally will be for a period up to five years. In making an authorization determination, the Secretary will take into account the following factors:

(1) Whether the United States has an agreement for peaceful nuclear cooperation in force covering exports to the country, territory, or international organization involved;

(2) Whether the country or the authorities of the territory involved is/are a party to, or has/have otherwise adhered to, the NPT;

(3) Whether the country or the authorities of the territory involved is/are in good standing with its/their acknowledged nonproliferation commitments;

(4) Whether the country or the authorities of the territory involved has/have accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has/have them in force;

(5) Whether there exist other nonproliferation controls or conditions on the proposed activity, including that the recipient is duly authorized by the country's government or the authorities of the territory involved to receive and operate the technology sought to be transferred;

(6) Significance of the assistance or technology transfer relative to the existing nuclear capabilities of the recipient country or territory;

(7) Whether the transfer is part of an existing cooperative enrichment

enterprise or the supply chain of such an enterprise;

(8) The availability of comparable assistance or technology from other sources; and

(9) Any other factors that may bear upon the political, economic, or security interests of the United States, including the obligations of the United States under treaties or other international agreements, and the obligations of the recipient country or the authorities of the territory involved under treaties or other international agreements.

(c) If the proposed assistance or technology transfer involves the export of sensitive nuclear technology as defined in § 810.3, the requirements of sections 127 and 128 of the Atomic Energy Act and of any applicable United States international commitments must also be met. For the export of sensitive nuclear technology, in addition to the factors in subparagraph (b), the Secretary will take into account:

(1) Whether the recipient country or the authorities of the recipient territory is/are a party to, or has/have adhered to, the NPT and is/are in full compliance with its/their obligations under the NPT;

(2) Whether the recipient country has signed, ratified, and is implementing a comprehensive safeguards agreement with the IAEA and has in force an Additional Protocol based on the model Additional Protocol, or, pending this, in the case of a regional accounting and control arrangement for nuclear materials, is implementing, in cooperation with the IAEA, a safeguards agreement approved by the IAEA Board of Governors prior to the publication of INFCIRC/540 (September 1997); or alternatively whether comprehensive safeguards, including the measures of the Model Additional Protocol are being applied in the recipient country or territory;

(3) Whether the recipient country or the authorities of the territory has/have not been identified in a report by the IAEA Secretariat that is under consideration by the IAEA Board of Governors, as being in breach of obligations to comply with the applicable safeguards agreement, nor continues/continue to be the subject of Board of Governors decisions calling upon it/them to take additional steps to comply with its/their safeguards obligations or to build confidence in the peaceful nature of its/their nuclear program, nor as to which the IAEA Secretariat has reported that it is unable to implement the applicable safeguards agreement. This criterion would not apply in cases where the IAEA Board of Governors or the United Nations

Security Council subsequently decides that adequate assurances exist as to the peaceful purposes of the recipient's nuclear program and its compliance with the applicable safeguards agreements. For the purposes of this paragraph, "breach" refers only to serious breaches of proliferation concern;

(4) Whether the recipient country or territory is adhering to the Nuclear Suppliers Group Guidelines and, where applicable, has reported to the Security Council of the United Nations that it is implementing effective export controls as identified by Security Council Resolution 1540; and

(5) Whether the recipient country or territory adheres to international safety conventions relating to nuclear or other radioactive materials or facilities.

(d) Unless otherwise prohibited by U.S. law, the Secretary may grant an application for specific authorization for activities related to the enrichment of source material and special nuclear material, provided that: the United States Government has received written assurances from the government of the country or the authorities of the territory involved—

(1) That it/they accepts/accept the sensitive enrichment equipment and enabling technologies, or an operable enrichment facility under conditions that do not permit or enable replication of the facilities;

(2) That the subject enrichment activity will not result in the production of uranium enriched to greater than 20% in the isotope uranium-235; and

(3) That there are in place appropriate security arrangements to protect the activity from use or transfer inconsistent with the country's national laws or the law applicable in the territory involved.

(e) Approximately 30 days after the Secretary's grant of a specific authorization, a copy of the Secretary's determination may be provided to any person requesting it at the Department's Public Reading Room, unless the applicant submits information demonstrating that public disclosure will cause substantial harm to its competitive position. This provision does not affect any other authority provided by law for the non-disclosure of information.

§ 810.10 Revocation, suspension, or modification of authorization.

The Secretary may revoke, suspend, or modify a general or specific authorization:

(a) For any material false statement in an application for specific authorization or in any additional information submitted in its support;

(b) For failing to provide a report or for any material false statement in a report submitted pursuant to § 810.12;

(c) If any authorized assistance or technology transfer is subsequently determined to be inimical to the interest of the United States or otherwise no longer meets the legal criteria for approval; or

(d) Pursuant to section 129 of the Atomic Energy Act.

§ 810.11 Information required in an application for specific authorization.

(a) An application letter must include the following information:

(1) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity, where it is incorporated or organized, the location of its principal office, and the degree of any control or ownership by any foreign person;

(2) The country or territory, or the international organization, to receive the assistance or technology; the name and location of any facility or project involved; and the name and address of the person for which the activity is to be performed;

(3) A description of the assistance or technology to be provided, including a complete description of the proposed activity, its approximate monetary value, and a detailed description of any specific project to which the activity relates; and

(4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

(b) The applicant should also include, as an attachment to the application letter, any information the applicant wishes to provide concerning the factors listed in § 810.9(b) and (c).

(c) U.S. persons seeking to employ a foreign national of a country not listed in § 810.6(b) in a position that could result in the transfer or technology subject to § 810.6(a), or seeking to employ any foreign national in a position that could result in the transfer of technology subject to § 810.7, must request a specific authorization. No application for specific authorization is required if the foreign national is lawfully admitted for permanent residence in the United States, or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). The applicant must provide, with respect to each foreign national to whom the applicant seeks to release technology subject to this part:

(1) A description of the technology that will be made available to the foreign national;

(2) The purpose of the proposed release, and a description of the applicant's technology control program;

(3) A copy of any confidentiality agreement between the applicant and the foreign national;

(4) Background information about the foreign national, including the individual's citizenship, all countries or territories where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part, and current immigration or visa status in the United States; and

(5) A signed undertaking by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.

(d) An applicant for a specific authorization related to the enrichment of fissile material must submit information that demonstrates that the proposed transfer will avoid, so far as practicable, the transfer of enabling design or manufacturing technology associated with such items; and that the applicant will share with the recipient only information required for the regulatory purposes of the recipient country or territory or to ensure the safe installation and operation of a resulting enrichment facility, without divulging enabling technology;

§ 810.12 Reports.

(a) Each person who has received a specific authorization shall, within 30 days after beginning the authorized activity, provide to DOE a written report containing the following information:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) A copy of the DOE letter authorizing the activity.

(b) Each person carrying out a specifically authorized activity shall inform DOE, in writing within 30 days,

of completion of the activity or of its termination before completion.

(c) Each person granted a specific authorization shall inform DOE, in writing within 30 days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) Each person, within 30 days after beginning any generally authorized activity under § 810.6, shall provide to DOE:

(1) The name, address, and citizenship of the person submitting the report;

(2) The name, address, and citizenship of the person for whom or which the activity is being performed;

(3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and

(4) An assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization to a country or territory with respect to which the conditions in § 810.6 are not met will take place only if the applicant obtains DOE approval.

(e) Persons engaging in generally authorized activities as employees of persons required to report are not themselves required to report.

(f) Persons engaging in activities generally authorized under § 810.6(b) are not subject to reporting requirements under this section.

(g) DOE may require reports to include such additional information that may be required by applicable U.S. law, regulation, or policy with respect to the specific nuclear activity or country for which specific authorization is required.

(h) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and International Security (NA 24).

§ 810.13 Additional information.

DOE may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.14 Violations.

(a) The Atomic Energy Act provides that:

(1) Permanent or temporary injunctions or restraining orders may be granted to prevent any person from violating any provision of the Atomic Energy Act or its implementing regulations.

(2) Any person convicted of violating or conspiring or attempting to violate

any provision of section 57 of the Atomic Energy Act may be fined up to \$10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment and a \$20,000 fine.

(b) Title 18 of the United States Code, section 1001, provides that persons convicted of willfully falsifying, concealing, or covering up a material fact or making false, fictitious or fraudulent statements or representations may be fined up to \$10,000 or imprisoned up to five years, or both.

§ 810.15 Effective date and savings clause.

Except for actions that may be taken by DOE pursuant to § 810.10, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before October 7, 2011 or generally authorized activities under those regulations for which the contracts, purchase orders, or licensing arrangements were already in effect. Persons engaging in activities that were generally authorized under regulations in effect before October 7, 2011, but that require specific authorization under the regulations in this part, must request specific authorization by December 6, 2011 but may continue their activities until DOE acts on the request.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

Capital Plans; Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to its regulations, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in its regulations. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and

approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by FR Y-14A and FR Y-14Q, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* 202/452-3819 or 202/452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202-395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting schedules and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm> or may be requested from the agency