§ 800.304 Default.

(a) In the event that the borrower fails to perform the terms and conditions of the loan, the borrower shall be in default and the Secretary shall have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all principal and interest amounts outstanding under the loan.

(b) No failure on the part of the Secretary to make demand at any time shall constitute a waiver of the rights held by the Secretary.

(c) Upon demand by the Secretary, the borrower shall have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full.

(d) In the event that the failure on the part of the borrower to perform the terms and conditions of the loan does not constitute an intentional act, but is brought about as a result of circumstances largely beyond the control of the borrower, or is deemed by, the Secretary to be insubstantial, the Secretary may elect, at the Secretary's option, to defer such performance and/or restructure the repayment required by the loan agreement in any mutually acceptable manner.

(e) Should the borrower fail to pay after demand as provided in paragraph (c) of this section, and no deferral or restructuring is agreed to by the Secretary as provided in paragraph (d) of this section, the Secretary shall undertake collection in accordance with the terms of the loan agreement and the applicable law.

§ 800.305 Disclosure.

Information received from an applicant by DOE may be available to the public subject to the provision of 5 U.S.C. 552, 18 U.S.C. 1905 and 10 CFR part 1004; provided that:

(a) Subject to the requirements of law, information such as trade secrets, commercial and financial information, and other information concerning the minority business enterprise that the enterprise submits to DOE in writing, in an application, or at other times throughout the duration of the loan on a privileged or confidential basis, will not be disclosed without prior notice to submitter in accordance with DOE regulations concerning public disclosure of information. Any submitter asserting that the information is privileged or confidential should appropriately identify and mark such information.

(b) Upon a showing satisfactory to the Secretary that any information or portion thereof obtained under this regulation would, if made public, divulge trade secrets or other proprietary information of the minority business enterprise, the Secretary may not disclose such information.

(c) This section shall not be construed as authority to withhold information from Congress or from any committee of Congress upon request of the Chairman.

§ 800.306 Noninterference with other laws.

Nothing in this regulation shall be construed to modify requirements imposed on the borrower by Federal, State and local government agencies in connection with permits, licenses, or other authorizations to conduct or finance its business.

§ 800.307 Appeals.

Any dispute concerning questions of fact arising under the loan agreement shall be decided in writing by the contracting officer. The borrower may request the contracting officer to reconsider any such decision, which reconsideration shall be promptly undertaken. If not satisfied with the contracting officer's final decision, the borrower, upon receipt of such written decision, may appeal the decision within 60 days in writing to the Chairman, Financial Assistance Appeals Board (FAAB), Department of Energy, Washington, DC 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

Sec.

AUTHORITY: Secs. 57, 127, 128, 129, 161, 222, 232, and 234 AEA, as amended by the *Nuclear Nonproliferation 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, 2272, 2280, 2282), the *Intelligence Reform and Terrorism Prevention Act of 2004*, Pub. L. 108–458, 118 Stat. 3768, and sec. 3116 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, Pub. L. 115–232; 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.

SOURCE: 80 FR 9375, Feb. 23, 2015, unless otherwise noted.

§ 810.1 Purpose.

The regulations in this part implement section 57 b.(2) 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, the Department of Commerce, and the Department of Defense, to authorize persons to directly or indirectly engage or participate in the development or 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 authorized activities.

(d) Specify civil penalties and enforcement proceedings.

[80 FR 9375, Feb. 23, 2015, as amended at 88 FR 1979, Jan. 12, 2023]

§ 810.2 Scope.

(a) Part 810 (this part) applies to:

(1) All persons subject to the jurisdiction of the United States who directly or indirectly engage or participate in the development or production of any special nuclear material outside the United States; and

(2) The transfer of technology that involves any of the activities listed in paragraph (b) of this section either in the United States or abroad by such 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 are:

(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 reactor development, production or use of the components within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core;

(6) Development, production or use of production accelerator-driven subcritical assembly systems;

(7) Heavy water production and hydrogen isotope separation when the technology or process has reasonable potential for large-scale separation of deuterium (^{2}H) from protium (^{1}H);

(8) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material, and post-irradiation examination of fuel elements, fuel assemblies and cladding thereof, if it is part of a reprocessing program; and

(9) The transfer of technology for the development, production, or use of equipment or material especially designed or prepared for any of the above listed activities. (*See* Nuclear Regulatory Commission regulations at 10 CFR part 110, Appendices A through K, and O, for an illustrative list of items considered to be especially designed or prepared for certain listed nuclear activities.)

(c) This part does not apply to:

(1) Exports authorized by the Nuclear Regulatory Commission, Department of State, or Department of Commerce;

(2) Transfer of publicly available information, publicly available technology, or the results of fundamental research;

(3) Uranium and thorium mining and milling (*e.g.*, production of impure source material concentrates such as uranium yellowcake and all activities prior to that production step);

(4) Nuclear fusion reactors per se, except for supporting systems involving hydrogen isotope separation technologies within the scope defined in paragraph (b)(7) of this section and § 810.7(c)(3);

(5) Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and

(6) Transfer of technology to any individual who 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)).

(d) 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.

§ 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.

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

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

Classified information means national security information classified under Executive Order 13526 or any predecessor or superseding order, and 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 multinational corporation.

Country, as well as government, nation, state, and similar entity, shall be read to include Taiwan, consistent with section 4 of the Taiwan Relations Act (22 U.S.C. 3303).

Development means any activity related to all phases before production such as: Design, design research, design analysis, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts.

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, but excludes U.S. lawful permanent residents and protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

General authorization means an authorization granted by the Secretary under section 57 b.(2) of the Atomic Energy Act to provide assistance or technology to foreign atomic energy activities subject to this part 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, 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-sustaining chain reaction.

Operational safety means the capability of a reactor to be operated in a manner that complies with national standards or requirements or widely-accepted international standards and recommendations to prevent uncontrolled or inadvertent criticality, prevent or mitigate uncontrolled release of radioactivity to the environment, monitor and limit staff exposure to radiation and radioactivity, and protect off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment, instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in compliance with such standards, requirements or recommendations.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution;

(2) Any group, government agency other than DOE, or any State or political entity within a State; and

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

Production means all production phases such as: Construction, production engineering, manufacture, integration, assembly or mounting, inspection, testing, and quality assurance.

Production accelerator means a particle accelerator especially 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 especially 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 especially 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 especially designed, used, or intended for the production of plutonium or uranium-233.

Publicly available information means information in any form that is generally accessible, without restriction, to the public.

Publicly available technology means technology that is already published or has been prepared for publication; arises during, or results from, fundamental research; or is included in an application filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184.

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) which is not available to the public (see definition of ''publicly available information'') and 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 assistance.

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 57b.(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.

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.

Technology means assistance or technical data required for the development, production or use of any plant, facility, or especially designed or prepared equipment for the activities described in § 810.2(b).

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

United States, when used in a geographical sense, includes Puerto Rico and 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 Arms Control (NPAC), Telephone (202) 586–1007.

(b) Communications also may be delivered to DOE's headquarters at 1000 Independence Avenue SW., Washington, DC 20585. All clearly marked proprietary information will be given the maximum protection allowed by law.

(c) Communications may also be delivered by email to: *Part810@nnsa.doe.gov*. For ''fast track'' activities described in §§ 810.6(c)(1) and (c)(2) emails should be sent to: *Part810-OperationalSafety@nnsa.doe.gov*. Notifications regarding activity in the Ukraine should be delivered by email to: *Part810-Ukraine@nnsa.doe.gov*.

§ 810.5 Interpretations.

(a) The advice of the DOE Office of Nonproliferation and Arms Control may be requested on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.6, or requires a 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 Arms Control, or a binding, written determination is requested from the DOE General Counsel, a response normally will be made within 30 calendar days and, if this is not feasible, an interim response will explain the reason for the delay.

(c) The DOE Office of Nonproliferation and Arms Control may periodically publish abstracts of general or specific authorizations that may be of general interest, exclusive of proprietary business-confidential data submitted to DOE or other information protected by law from unauthorized disclosure.

§ 810.6 Generally authorized activities.

The Secretary has determined that the following activities are generally authorized, provided that no sensitive nuclear technology or assistance described in § 810.7 is involved:

(a) Engaging directly or indirectly in the production of special nuclear material at facilities in countries or with entities listed in the Appendix to this part;

(b) Transfer of technology to a citizen or national of a country other than the United States not listed in the Appendix to this part and working at an NRC-licensed facility, provided:

(1) The foreign national is lawfully employed by or contracted to work for a U.S. employer in the United States;

(2) The foreign national executes a confidentiality agreement with the U.S. employer to safeguard the technology from unauthorized use or disclosure;

(3) The foreign national has been granted unescorted access in accordance with NRC regulations at an NRC-licensed facility; and

(4) The foreign national's U.S. employer authorizing access to the technology complies with the reporting requirements in § 810.12(g).

(c) Activities at any safeguarded or NRC-licensed facility to:

(1) Prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population, which emergency in DOE's assessment cannot be met by other means, provided DOE is notified in writing in advance and does not object within 48 hours of receipt of the advance notification;

(2) Furnish operational safety information or assistance to existing safeguarded civilian nuclear reactors outside the United States in countries with safeguards agreements with the IAEA or an equivalent voluntary offer, provided DOE is notified in writing and approves the activity in writing within 45 calendar days of the notice. The applicant should provide all the information required under § 810.11 and specific references to the national or international safety standards or requirements for operational safety for nuclear reactors that will be addressed by the assistance; or

(3) Furnish operational safety information or assistance to existing, proposed, or new-build civilian nuclear facilities in the United States, provided DOE is notified by certified mail return receipt requested and approves the activity in writing within 45 calendar days of the notice. The applicant should provide all the information required under § 810.11.

(d) Participation in exchange programs approved by the Department of State in consultation with DOE;

(e) Activities 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,'' done on December 9, 1980;

(f) Activities carried out by persons who are full-time employees of the IAEA or whose employment by or work for the IAEA is sponsored or approved by the Department of State or DOE; or

(g) Extraction of Molybdenum-99 for medical use from irradiated targets of enriched uranium, provided that the activity does not also involve purification and recovery of enriched uranium materials, and provided further, that the technology used does not involve significant components relevant for reprocessing spent nuclear reactor fuel (*e.g.*, high-speed centrifugal contactors, pulsed columns).

§ 810.7 Activities requiring specific authorization.

Any person requires a specific authorization by the Secretary before:

(a) Engaging in any of the activities listed in § 810.2(b) with any foreign country or entity not specified in the Appendix to this part;

(b) Providing or transferring sensitive nuclear technology to any foreign country or entity; or

(c) Engaging in or providing technology (including assistance) for any of the following activities with respect to any foreign country or entity (or a citizen or national of that country other than U.S. lawful permanent residents or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)):

(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) Heavy water production, and hydrogen isotope separation, when the technology or process has reasonable potential for large-scale separation of deuterium (^{2}H) from protium (^{1}H);

(4) Development, production or use of a production accelerator-driven subcritical assembly system;

(5) Development, production or use of a production reactor; or

(6) Reprocessing of irradiated nuclear fuel or targets containing special nuclear material.

§ 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 classified information;

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

(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 engage in activities 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 Arms Control (NPAC).

(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, Department of Commerce, and Department of Defense, that the activity will not be inimical to the interest of the United States. In making such a determination, the Secretary will take into account the following factors:

(1) Whether the United States has an agreement for cooperation in force covering exports to the country or entity involved;

(2) Whether the country is a party to, or has otherwise adhered to, the NPT;

(3) Whether the country is in good standing with its acknowledged nonproliferation commitments;

(4) Whether the country is in full compliance with its obligations under the NPT;

(5) Whether the country has accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has them in force;

(6) Whether other nonproliferation controls or conditions exist on the proposed activity, including that the recipient is duly authorized by the country to receive and use the technology sought to be transferred;

(7) Significance of the assistance or transferred technology relative to the existing nuclear capabilities of the country;

(8) Whether the transferred technology is part of an existing cooperative enrichment enterprise or the supply chain of such an enterprise;

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

(10) Any other factors that may bear upon the political, economic, competitiveness, 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 country under treaties or other international agreements.

(c) If the proposed activity involves the export of sensitive nuclear technology, 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 paragraph (b) of this section, the Secretary will take into account:

(1) Whether the 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 country;

(2) Whether the country has 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 to be the subject of Board of Governors decisions calling upon it to take additional steps to comply with its safeguards obligations or to build confidence in the peaceful nature of its 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 country'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;

(3) Whether the country 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

(4) Whether the country 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:

(1) The U.S. Government has received written nonproliferation assurances from the government of the country;

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

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

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

(e) Approximately 30 calendar 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 DOE'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 authorization governed by this part is subsequently determined by the Secretary 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 individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency;

(2) The country or entity 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 or whom 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 as specified in §§ 810.9(b)(7), (8), and (9); and

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

(b) Except as provided in § 810.6(b), an applicant seeking to employ a citizen or national of a country not listed in the Appendix in a position that could result in the transfer of technology subject to § 810.2, or seeking to employ any foreign national in the United States or in a foreign country that could result in the export of assistance or transfer of technology subject to § 810.7 must request a specific authorization. The applicant must provide, with respect to each foreign national to whom access to technology will be granted, the following:

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

(2) The purpose of the proposed transfer, a description of the applicant's technology control program, and any Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;

(3) A copy of any confidentiality agreement to safeguard the technology from unauthorized use or disclosure between the applicant and the foreign national;

(4) Background information about the foreign national, including the individual's citizenship, all countries 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 any current immigration or visa status in the United States; and

(5) A statement signed 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.

(c) 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 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

calendar 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 calendar 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 calendar days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) 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.

(e) Each person, within 30 calendar 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) A written assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization under circumstances in which the conditions in §810.6 would not be met will take place only if the applicant obtains DOE's prior written approval.

(f) Individuals engaging in generally authorized activities as employees of persons required to report are not themselves required to submit the reports described in paragraph (e) of this section.

(g) Persons engaging in generally authorized activities under §810.6(b) are required to notify DOE that a citizen or national of a country not listed in the Appendix to this part has been granted access to information subject to §810.2 in accordance with Nuclear Regulatory Commission access requirements. The report should contain the information required in §810.11(b).

(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 Arms Control (NPAC).

§ 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 Special provisions regarding Ukraine.

(a) *Pre-activity notification requirements.* Any person beginning any generally authorized activity involving Ukraine shall provide to DOE at least ten days prior to beginning that activity a report containing the following information:

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

(2) The name, address, and citizenship of the person for which the activity is to be performed;

(3) A description of the activity, the date it is proposed to begin, its location, status, and anticipated date of completion; and

(4) A written assurance that the person that is to perform the activity has an agreement with the recipient that any subsequent transfer of technology or information transferred under general authorization will not be transferred to a country that is not listed in the Appendix to this part without the prior written approval of DOE.

(b) *Post-activity reporting requirements.* Every person completing a generally authorized activity in Ukraine shall

provide to DOE within ten days following the original transfer of technology or information written confirmation that such transfer was completed in accordance with the description of the activity provided as required by paragraph (a) of this section.

§ 810.15 Violations.

(a) The Atomic Energy Act provides that:

(1) In accordance with section 232 of the AEA, permanent or temporary injunctions, restraining or other orders may be granted to prevent a violation of any provision of the Atomic Energy Act or any regulation or order issued thereunder.

(2) In accordance with section 222 of the AEA, whoever willfully violates, attempts to violate, or conspires 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 or a $20,000 fine, or both.

(b) In accordance with Title 18 of the United States Code, section 1001, whoever knowingly and willfully falsifies, conceals, or covers up a material fact or makes or uses false, fictitious or fraudulent statements or representations shall be fined under that title or imprisoned up to five or eight years depending on the crime, or both.

(c) In accordance with section 234 of the AEA, any person who violates any provision of section 57 b. of the AEA, as implemented under this part, shall be subject to a civil penalty, not to exceed $127,973 per violation, such amount to be adjusted annually for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. If any violation is a continuing one, each day from the point at which the violating activity began to the point at which the violating activity was suspended shall constitute a separate violation for the purpose of computing the applicable civil penalty. The mere act of suspending an activity does not constitute admission that the activity was a violation and does not waive the rights and processes outlined in paragraphs (c)(4) through (14) of this section or otherwise impact the right of the person to appeal any civil penalty that may be imposed.

(1) In order to begin a proceeding to impose a civil penalty under this paragraph (c), the Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, shall notify the person by a written notice of violation sent by registered or certified mail to the last known address of such person, of:

(i) The date, facts, and nature of each act or omission with which the person is charged;

(ii) The particular provision or provisions of section 57 b. of the AEA, as implemented under this part, involved in each alleged violation;

(iii) The penalty which DOE proposes to impose, including an explanation of how the factors at paragraph (c)(5) of this section were considered;

(iv) The opportunity of the person to submit a written reply within 30 calendar days of receipt of such preliminary notice of violation showing why such penalty should not be imposed; and

(v) The possibility of collection by civil action upon failure to pay the civil penalty.

(2) A reply to the notice of violation must:

(i) State any facts, explanations, and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed penalty should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted;

(iv) Furnish full and complete answers to any questions set forth in the notice of violation; and

(v) Include copies of all relevant documents.

(3) If a person fails to submit a written reply within 30 calendar days of receipt of a notice of violation, the notice of violation, including any penalties therein, constitutes a final decision, and payment of the full amount of the civil penalty assessed in the notice of violation is due 30 calendar days after receipt of the notice of violation. Such failure to submit a reply constitutes a waiver of the rights and

processes outlined in paragraphs (c)(4) through (14) of this section.

(4) The Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, at the written request of a person notified of an alleged violation, may extend in writing, for a reasonable period, the time for submitting a reply.

(5) If a person submits a timely written reply to the notice of violation, the Deputy Administrator for Defense Nuclear Nonproliferation will make a final determination whether the person violated or is continuing to violate a requirement of section 57 b. of the AEA, as implemented under this part. Based on a determination that a person has violated or is continuing to violate a requirement of section 57 b., as implemented under this part, the Deputy Administrator for Defense Nuclear Nonproliferation will issue to that person a final notice of violation that concisely states the violation, the amount of the civil penalty imposed, including an explanation of how the factors in this paragraph were considered, further actions necessary by or available to the person, and that upon failure to timely pay the civil penalty, the penalty may be collected by civil action. The Deputy Administrator for Defense Nuclear Nonproliferation will send such a final notice of violation by registered or certified mail to the last known address of the person. The amount of the civil penalty will be based on:

(i) The nature, circumstances, extent, and gravity of the violation or violations;

(ii) The violator's ability to pay;

(iii) The effect of the civil penalty on the person's ability to do business;

(iv) Any history of prior violations;

(v) The degree of culpability;

(vi) Whether the violator self-disclosed the violation;

(vii) The economic significance of the violation; and (viii) Such other factors as justice may require.

(6) Any person who receives a final notice of violation under paragraph (c)(5) of this section may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Under Secretary for Nuclear Security within 30 calendar days of receipt of the final notice of violation. If the person does not request a hearing within 30 calendar days, the final notice of violation, including any penalties therein, constitutes a final decision, and payment of the full amount of the civil penalty assessed in the final notice of violation is due 45 calendar days after receipt of the final notice of violation.

(7) Upon receipt from a person of a written request for a hearing, the Under Secretary for Nuclear Security or his/her designee, shall:

(i) Appoint a Hearing Counsel; and

(ii) Forward the request to the DOE Office of Hearings and Appeals (OHA). The OHA Director shall appoint an OHA Administrative Judge to preside at the hearing.

(8) The Hearing Counsel shall be an attorney employed by DOE, and shall have all powers necessary to represent DOE before the OHA.

(9) In all hearings under this paragraph (c):

(i) The parties have the right to be represented by a person of their choosing, subject to possessing an appropriate information access authorization for the subject matter. The parties are responsible for producing witnesses on their behalf, including requesting the issuance of subpoenas, if necessary;

(ii) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 18 U.S.C. 1621, dealing with the criminal penalties associated with false statements and perjury;

(iii) Witnesses are subject to cross-examination;

(iv) Formal rules of evidence do not apply, but OHA may use the Federal Rules of Evidence as a guide; and

(v) A court reporter will make a transcript of the hearing.

(vi) The Administrative Judge has all powers necessary to regulate the conduct of proceedings:

(vii) The Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint;

(viii) The Administrative Judge may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission;

(ix) The Administrative Judge may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence;

(x) The Administrative Judge may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing;

(xi) The Administrative Judge may, at the request of a party or on his or her own initiative, dismiss a claim, defense, or party and make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Administrative Judge, or, without good cause, to attend a hearing;

(xii) The Administrative Judge, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Administrative Judge;

(xiii) The parties are entitled to make oral closing arguments, but post-hearing submissions are only permitted by direction of the Administrative Judge;

(xiv) Parties allowed to file written submissions, or documentary evidence must serve copies upon the other parties within the timeframe prescribed by the Administrative Judge;

(xv) The Administrative Judge is prohibited, beginning with his or her appointment and until a final agency decision is issued, from initiating or otherwise engaging in *ex parte* (private) discussions with any party on the merits of the complaint;

(xvi) The Administrative Judge is responsible for determining the date, time, and location of the hearing, including whether the hearing will be conducted via video conference; and

(xvii) The Administrative Judge shall convene the hearing within 180 days of the OHA's receipt of the request for a hearing, unless the parties agree to an extension of this deadline by mutual written consent, or the Administrative Judge determines that extraordinary circumstances exist that require a delay.

(10) Hearings shall be open only to Hearing Counsel, duly authorized representatives of DOE, the person and the person's counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the person but not in the presence of other witnesses.

(11) The Administrative Judge must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Administrative Judge may issue such orders as may be necessary to consider such evidence in camera including the preparation of a supplemental recommended decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(12) DOE shall have the burden of proving the violation(s) as set forth in the final notice of violation by a preponderance of the evidence. The person

to whom the notice of violation is addressed shall have the burden of proving any affirmative defense by a preponderance of the evidence. The amount of the penalty associated with any violation which is upheld shall be adopted by the Administrative Judge unless not supported by the facts, in which event the Administrative Judge will include such information in the Administrative Judge's recommended decisions to the Under Secretary for reconsideration of the amount of the penalty based on the Administrate Judge's resolution of the factual issues.

(13) Within 180 days of receiving a copy of the hearing transcript, or the closing of the record, whichever is later, the Administrative Judge shall issue a recommended decision. The recommended decision shall contain findings of fact and conclusions regarding all material issues of law, as well as the reasons therefor. If the Administrative Judge determines that a violation has occurred and that a civil penalty is appropriate, the recommended decision shall set forth the amount of the civil penalty based on the factors in paragraph (c)(5) of this section.

(14) The Administrative Judge shall forward the recommended decision to the Under Secretary for Nuclear Security. The Under Secretary for Nuclear Security shall make a final decision as soon as practicable after completing his/her review. This may include compromising, mitigating, or remitting the penalties in accordance with section 234 a. of the AEA, as amended. DOE shall notify the person of the Under Secretary for Nuclear Security's final decision or other action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final decision shall pay the full amount of the civil penalty assessed in the final decision within 30 calendar days unless otherwise determined by the Under Secretary for Nuclear Security.

(15) If a civil penalty assessed in a final decision is not paid as provided in paragraphs(c)(3), (6), or (14) of this section, as appropriate, the Under Secretary for Nuclear Security may request the Department of Justice to initiate a civil action to collect the penalty imposed under this paragraph in accordance with section 234 c. of the AEA.

(16) The Under Secretary for Nuclear Security or his/her designee may publish redacted versions of notices of violation and final decisions.

[80 FR 9375, Feb. 23, 2015, as amended at 88 FR 1979, Jan. 12, 2023; 89 FR 1028, Jan. 9, 2024; 89 FR 105406, Dec. 27, 2024]

§810.16 Effective date and savings clause.

(a) The regulations in this part are effective March 25, 2015.

(b) 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 March 25, 2015 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 March 25, 2015, but that require specific authorization under the regulations in this part, must request specific authorization by August 24, 2015 and may continue their activities until DOE acts on the request.

APPENDIX A TO PART 810—GENERALLY AUTHORIZED DESTINATIONS

Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
Canada
Chile (For all activities related to INFCIRC/834 only)
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Indonesia
International Atomic Energy Agency
Ireland
Italy
Japan
Kazakhstan
Korea, Republic of
Latvia
Lithuania
Luxembourg
Malta
Mexico
Morocco
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia

South Africa
Spain
Sweden
Switzerland
Taiwan
Turkey
Ukraine (Refer to §810.14 for specific information and requirements)
United Arab Emirates
United Kingdom
Vietnam

[80 FR 9375, Feb. 23, 2015, as amended at 88 FR 8219, Feb. 8, 2023]

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

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APPENDIX A TO PART 820—GENERAL STATEMENT OF ENFORCEMENT POLICY

AUTHORITY: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

SOURCE: 58 FR 43692, Aug. 17, 1993, unless otherwise noted.

Subpart A—General

§ 820.1 Purpose and scope.

(a) *Scope.* This part sets forth the procedures to govern the conduct of persons involved in DOE nuclear activities and, in particular, to achieve compliance with the DOE Nuclear Safety Requirements by all persons subject to those requirements.

(b) *Questions not addressed by these rules.* Questions that are not addressed in this part shall be resolved at the discretion of the DOE Official.

(c) *Exclusion.* Activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion are excluded from the requirements of subparts D and E of this part regarding interpretations and exemptions related to this part. The Deputy Administrator for Naval Reactors or his designee will be responsible for formulating, issuing, and maintaining appropriate records of interpretations and exemptions for these facilities and activities.

[58 FR 43692, Aug. 17, 1993, as amended at 71 FR 68732, Nov. 28, 2006]