6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994-AA02

Assistance to Foreign Atomic Energy Activities

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

ACTION: Supplemental notice of proposed rulemaking and public meetings.

SUMMARY: On September 7, 2011, DOE issued a notice of proposed rulemaking (NOPR) to propose the first comprehensive updating of regulations concerning Assistance to Foreign Atomic Energy Activities since 1986. The NOPR reflected a need to make the regulations consistent with current global civil nuclear trade practices and nonproliferation norms, and to update the activities and technologies subject to the Secretary of Energy's specific authorization and DOE reporting requirements. It also identified destinations with respect to which most assistance would be generally authorized and destinations that would require a specific authorization by the Secretary of Energy. After careful consideration of all comments received, DOE today is issuing this supplemental notice of proposed rulemaking (SNOPR) to respond to those comments, propose new or revised rule changes, and afford interested parties a second opportunity to comment.

DATES: Written comments must be postmarked on or before [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] to ensure consideration. DOE will hold two public meetings. The first public meeting will be held in the Large Auditorium at the U.S. Department of Energy, Forrestal Building, on August 5, 2013, from 1 to 4 p.m. DOE has also arranged a call-in line for this first meeting. Interested persons should inform DOE of their intent to participate

by phone or attend in-person, as there are a limited number of lines for the call and there is limited room capacity in the auditorium. DOE asks that interested persons send their requests to participate in this meeting via e-mail at Part810.SNOPR@nnsa.doe.gov, by 4:30 p.m. on August 2, 2013. To ensure in-person participation, email the request by 10 am, August 2, 2013. DOE will confirm its receipt of requests and, at that time, provide further logistical information, including the call-in number for those participating by phone. DOE will hold a second public meeting in September. The announcement of the second public meeting will be provided in a future Federal Register notice.

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

1. Federal Rulemaking Portal: http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035. Follow the instructions for submitting comments.

2. E-mail*: Part810.SNOPR@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.

The first public meeting for this SNOPR will be held at the U.S. Department of Energy,

Forrestal Building, Large Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585.

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 Barsy 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. Barsy) 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:

I. Background

The Department of Energy's (DOE) part 810 regulation implements section 57 b.(2) of the Atomic Energy Act (AEA) of 1954, as amended by section 302 of the Nuclear Nonproliferation Act of 1978 (NNPA). Part 810 controls the export of unclassified nuclear technology and assistance. It enables peaceful nuclear trade by helping to assure that nuclear technologies exported from the United States will not be used for non-peaceful purposes. Part 810 controls the export of nuclear technology and assistance by identifying activities that can be "generally authorized" by the Secretary, thereby requiring no further authorization under part 810. It also controls those activities that require "specific authorization" by the Secretary. Part 810 also delineates the process for applying for specific authorization from the Secretary and identifies the reporting requirements for activities subject to part 810.

Part 810 has not been comprehensively updated since 1986. Since then, the global civil nuclear market has expanded, particularly in China, the Middle East, and Eastern Europe, with vendors from France, Japan, the Republic of Korea, Russia, and Canada having emerged to serve customers in these emerging markets. DOE believes the regulation should be updated to ensure that the part 810 nuclear

export controls remain effective and efficient as the commercial nuclear market expands. This means carefully determining destinations and activities that are generally authorized or subject to a specific authorization, and assuring that the determinations are consistent with current U.S. national security, diplomatic, and trade policy.

On September 7, 2011, DOE issued a NOPR to propose the updating of part 810 (76 FR 55278). The NOPR listed destinations for which most assistance to foreign atomic energy activities would be generally authorized, and activities that would require a specific authorization by the Secretary of Energy. Activities requiring specific authorization are set forth in proposed § 810.7. Additionally, the NOPR identified types of technology transfers subject to the regulation. DOE received numerous comments on the NOPR. After careful consideration of all comments received, DOE today is issuing this SNOPR to respond to those comments and afford interested parties a second opportunity to comment.

As described below and in response to comments received from the public on the NOPR, this SNOPR proposes a number of substantial changes to the current rule that are different than those contained in the NOPR. Additionally, certain changes to the current rule proposed in the NOPR are re-proposed for consideration in this SNOPR. Details of the proposed changes to the current part 810 and the NOPR contained in this SNOPR are summarized in Section II and discussed in greater detail in Section IV.

II. Description of Proposed Changes

In response to the NOPR, the Department received written comments from over 30 entities, and over 3,000 form letters coordinated by the Consumer Energy Alliance. Two commenters, the Nuclear Energy Institute and a law firm on behalf of the Ad Hoc Utility Group (a number of companies that operate 56 nuclear reactors at 35 sites), offered specific text revisions to the entirety of part 810; other

commenters focused more narrowly on one or more specific provisions of particular interest to the submitter. All of the comments are available for review on line at: http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035. Docket ID: DOE-HQ-2011-0035.

This SNOPR responds to the comments received in response to the NOPR and proposes changes to the current part 810. Today's proposed changes, summarized by section, are as follows:

1. The proposed change to § 810.1 "Purpose" states the statutory basis and purpose for the part 810 regulation, eliminating the need for current § 810.6. Unlike the NOPR, which proposed to retain unchanged the phrase "U.S. persons" in the current § 810.1, today's proposal would replace "U.S. persons" with "persons."*

2. The proposed change to paragraph (a) in § 810.2 "Scope" states DOE's jurisdiction under section 57 b.(2) of the Atomic Energy Act. Proposed § 810.2(b) would identify activities governed by the regulation when those activities, whether conducted in the United States or abroad, directly or indirectly result in the development or production of special nuclear material (SNM). Proposed § 810.2(c) would identify exempt activities, some retained from the current part 810 regulation, and the following are proposed to be added:

- Exports authorized by the Departments of State or Commerce, or the Nuclear Regulatory Commission;
- Transfer of "publicly available information," "publicly available technology," and the results of "fundamental research";
- Assistance for certain mining and milling activities, and certain fusion reactors because these

* Prior to 1986, § 810.1 and its predecessors referred to "persons" who engage in activities subject to part 810. 48 FR 2518 (Feb. 4, 1983); 40 FR 44846 (Sep. 30, 1975); 21 FR 418 (Jan. 20, 1956). In 1986, DOE amended § 810.1 to add "U.S." before "persons" (51 FR 44570, Dec. 10, 1986), but did not employ that phrase anywhere else in part 810; all other provisions of the regulation in effect from 1986 to the present utilize simply "persons." The solitary reference to "U.S. persons" in § 810.1 was unnecessary in 1986, and continued usage of "U.S." is also unnecessary now. Today, DOE proposes to revert to the use of "persons" in proposed § 810.1.

activities do not involve the production or use of special nuclear material;

- Production or extraction of radiopharmaceutical isotopes when the process does not involve special nuclear material; and
- Transfers to lawful permanent residents of the United States or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

3. In proposed § 810.3 "Definitions," a number of new or revised definitions are proposed, to reflect terminological changes and technological developments since the part 810 regulation was last updated and to provide additional clarity to certain terms currently defined and used in the regulation. They are described in Section IV. D. of this Preamble.

4. Proposed § 810.4 "Communications" and § 810.5 "Interpretations" update points of contact information to reflect current Departmental organizational structure and office designations for applications, questions, or requests. The SNOPR adds a proposed new paragraph (c) to § 810.5 that reflects DOE's intent to periodically publish abstracts of general or specific authorizations, excluding applicants' proprietary data and other information protected by law from public disclosure, that may be of general interest.

5. Current § 810.6 "Authorization requirement," which quotes section 57 b. of the Atomic Energy Act, is proposed to be deleted and replaced, as it was in the NOPR, by proposed § 810.1 "Purpose."

6. The current § 810.7 "Generally authorized activities" is today, as in the NOPR, proposed to be re-numbered as § 810.6. It would identify activities the Secretary has found to be not inimical to the interest of the United States and which may be generally authorized.

(1) Proposed paragraph (a) would generally authorize assistance or transfers of technology to destinations listed in the proposed Appendix. The current § 810.8(a) uses the opposite classification approach. It lists destinations for which a specific authorization is required.

(2) The current § 810.7(a) "furnishing public information" would be deleted from the list of

generally authorized activities. In the NOPR, "public information" was proposed to be exempt from part 810. In proposed § 810.2(c)(2) of the SNOPR, "publicly available information," "publicly available technology," and the results of "fundamental research" (all as defined in proposed § 810.3) would be exempt from the scope of part 810.

(3) In a new approach to deemed exports in the SNOPR, proposed § 810.6(b) would generally authorize technology transfers to citizens or nationals of specific authorization destinations who are lawfully employed by or contracted to work for nuclear industry employers in the United States, subject to the individual meeting Nuclear Regulatory Commission access requirements and executing a confidentiality agreement to prevent unauthorized disclosure of nuclear technology to which those individuals are afforded access. Deemed export reporting requirements with respect to these individuals are set forth in proposed § 810.12(g).

(4) The existing "fast track" general authorization in current § 810.7(b) for emergency activities at any safeguarded facility and operational safety assistance to existing foreign safeguarded reactors was not included in the NOPR. In the SNOPR, the authorization in the current regulation is proposed to be retained, in paragraphs (c)(1) and (c)(2), respectively, but with a revised definition of "operational safety." Furnishing operational safety information or assistance to existing, proposed, or new-build nuclear power plants in the United States would be authorized in proposed § 810.6(c)(3).

(5) Proposed paragraph (d) would generally authorize exchange programs approved by the Department of State with DOE concurrence, similar to the provision in § 810.6(b)(4) of the NOPR.

(6) Proposed paragraphs (e) and (f) would authorize certain cooperative activities with the International Atomic Energy Agency (IAEA), namely, 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"; and those carried out by full-time employees of the IAEA, or by individuals whose employment or work is sponsored or approved by the Department of State or DOE. Similar provisions were set forth in §§ 810.6(b)(3) and (5) of the NOPR.

(7) Proposed paragraph (g) would authorize transfers of technology and assistance for the extraction of Molybdenum-99 from spent nuclear fuel in certain circumstances. This provision is not in the current rule, nor was it proposed in the NOPR.

7. Proposed § 810.7 – renumbered from the current § 810.8 – "Activities requiring specific authorization" would continue to list activities that would require a specific authorization for all foreign destinations. The NOPR proposed to eliminate the list and require a specific authorization for engaging in the production of special nuclear material.

8. Proposed § 810.8 "Restrictions on general and specific authorization" would remain unchanged from § 810.9 in the current rule and the NOPR, except for the following editorial revisions: replacing "these regulations" with "this part" in the introductory phrase; replacing "Restricted Data and other classified information" with "classified information" in proposed paragraph (a), and replacing "Government agencies" with "U.S. Government agencies" in paragraph (b).

9. Proposed § 810.9 "Grant of specific authorization," currently § 810.10 and proposed § 810.9 in the NOPR, would identify the factors, consonant with U.S. international nonproliferation commitments, that would be considered by the Secretary in granting a specific authorization. Proposed paragraph (b) would add as factors to be considered: whether the government of the country concerned is in good standing with respect to its nonproliferation commitments (proposed paragraph (b)(3)); and whether, under proposed paragraph (b)(8), the transfer is part of an existing

"cooperative enrichment enterprise" (as defined in proposed § 810.3) or the supply chain of such an enterprise. Proposed § 810.9(c) addresses the export of sensitive nuclear technology as defined in § 810.3, and would be expanded to describe additional factors, which include compliance with the U.S.'s Nuclear Suppliers Group (NSG) commitments, the Secretary would take into account when considering a specific authorization request for the transfer of sensitive nuclear technology. The United States adheres to the NSG Guidelines for Nuclear Transfers (IAEA Information Circular [INFCIRC] 254/Part1) and Guidelines for Transfers of Nuclear-related Dual-Use Equipment, Materials, Software and Related Technology (IAEA INFCIRC/254/Part 2). The current versions of both sets of Guidelines can be found at www.nuclearsuppliersgroup.org. As in the NOPR, a new paragraph (d) is proposed to be added, concerning requests to engage in authorized foreign atomic energy assistance activities related to the enrichment of source material and special nuclear material. Approval of such requests would be conditioned upon the receipt of written nonproliferation assurances from the government of the country concerned, a proposal designed to facilitate U.S. conformity to the Nuclear Supplier Group Guidelines.

10. Proposed § 810.10 "Revocation, suspension, or modification of authorization," currently § 810.11, would (as in the NOPR) make an editorial revision, changing "authorized assistance" in paragraph (c) to "authorization governed by this part."

11. The current § 810.12, renumbered as proposed § 810.11 "Information required in an application for specific authorization," would (as in the NOPR) be expanded to add more detail about the information required for DOE to process a specific authorization request, including applications for "deemed export" and "deemed re-export" authorizations. 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) and (c).

Current § 810.12(a) requires that an application for specific authorization include information regarding "the degree of any control or ownership by any foreign person or entity". The NOPR proposed to add a definition of the undefined term "foreign person" to state: "*Foreign person* means a person other than a U.S. person". For the reasons explained in the footnote in Section II, Description of Proposed Changes, the SNOPR proposes to delete the term "U.S. person" from the first paragraph in § 810.1 of the current regulation. Since the term "foreign person" is used only once in the current regulation (in § 810.12(a)), and was used only once in the NOPR (proposed § 810.11(a) – unchanged from current § 810.12(a)) -- DOE has determined that to avoid any possible confusion between usages of "person" and "foreign national", the SNOPR proposes to revise the formulation of proposed § 810.11(a) without reference to "foreign person". Instead, proposed § 810.11(a)(1) would request information concerning an applicant's foreign ownership or control by asking about "the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency".

Proposed paragraph (c) has been modified from proposed language in the NOPR but would continue to address the required content for applications filed by U.S. companies seeking to employ in the United States citizens or nationals of specific authorization countries that would result in the transfer of technology subject to proposed §§ 810.2 or 810.7 (deemed exports). Submission of the same information would also be required with respect to any such citizen or national whom the part 810 applicant seeks to employ abroad in either a general or specific authorization country (a deemed re-export). Under today's proposal, no part 810 authorization would be required for an 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)).

The SNOPR proposes that § 810.11(c) would make explicit DOE's current practice of requiring an

applicant for a specific authorization to provide detailed information concerning the citizenship, 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 would be required to provide a description of the subject technology, a copy of any confidentiality agreement between the U.S. employer and the employee concerning the protection of the employer's proprietary business data from unauthorized disclosure, and written nonproliferation assurances by the individual. 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, renumbered as proposed § 810.12, would be changed by proposed changes in reporting obligations. A proposed addition in § 810.12(d) would require companies to submit reports to DOE, to include information required by U.S. law concerning specific civil nuclear activities or exports to countries for which a specific authorization is required. Under proposed § 810.12(e)(4), the reference to reporting on materials and equipment would be retained to ensure that any technical data that is transferred as part of dual-use equipment is reported. Proposed paragraph (g) is new and describes the reporting requirements of U.S. employers with respect to their deemed export and deemed re-export employees.

13. The current § 810.14, § 810.15 and § 810.16 would, as in the NOPR, be renumbered as proposed § 810.13 "Additional information," proposed § 810.14 "Violations," and proposed § 810.15 "Effective date and savings clause."

III. Public Comment Procedures

Interested persons are invited to submit comments on this regulatory proposal. 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, and on the Internet at: http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

Public Meeting.

The first public meeting will be held at the time, date, and place indicated in the DATES and ADDRESSES sections of this SNOPR. Any person who is interested in attending in-person, participating by phone, or making an oral presentation in-person or through the call-in line should e-mail a request to the e-mail address in the DATES section by the date and time specified for making such requests. As noted in the DATES section, the number of lines available to call into the meeting is limited. For all oral presentations, the person should provide a daytime phone number where he or she can be reached. Each oral presentation may be limited and may in no instance be longer than 20 minutes. Persons making an oral presentation in-person are requested to bring 3 copies of their prepared statement to the public meeting and submit it to the registration desk. Persons making an oral presentation through the call-in line are requested to e-mail their statement either before or after the public meeting to the email address in the DATES section. DOE reserves the right to select the persons who will speak. DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the meeting. A DOE official will be designated to preside at the meeting.

The meeting will not be a judicial or evidentiary-type hearing. Any further procedural rules for the conduct of the meeting will be announced by the presiding official. After the public meeting, interested persons may submit further comments until the end of the comment period. A transcript of the meeting will be made, and the entire record of this rulemaking will be retained by DOE and posted at regulations.gov.

IV. Discussion of Comments Received on the September 2011 NOPR

Overview

As noted above in Section II, Description of Proposed Changes, DOE received written comments on the NOPR from over 30 individual entities and over 3,000 form letters from entities coordinated by the Consumer Energy Alliance.

The commenters represented diverse interests and raised concerns about different sections of the proposed rule, but they acknowledged the important goals of part 810:

- **Effective threat reduction**. Part 810 should be updated to more effectively address proliferation challenges, as there have been significant changes in geopolitics, economics, technologies and relationships between the United States and its nuclear trading partners since the regulation last underwent comprehensive revision in 1986.
- **Effective nuclear trade support**. Part 810 should support U.S. companies competing to provide nuclear technology for peaceful purposes in global civil nuclear reactor markets.
- **Efficient regulation**. The part 810 licensing process should be efficient, transparent, timely, and predictable. The cost of regulation to the government and industry should not exceed the benefits. Duplicative or unnecessary regulatory requirements should be avoided.

DOE has reviewed the comments and now proposes in this SNOPR to further revise part 810 based on considerations of those comments. The comments were analyzed and placed into three categories:

A. Process Issues

B. Classification of Foreign Destinations

C. Activities Requiring Part 810 Authorization

A. Process Issues

1. Compliance with Administrative Procedure Act rulemaking requirements

Multiple commenters claimed the NOPR contravened various requirements of the Administrative Procedure Act (APA) and various Executive Orders. The alleged defects were:

- Inadequate notice and opportunity to comment – failure to explain DOE's rationale for proposed changes sufficient to permit meaningful comment by interested parties.
- Inadequate impact analysis – failure to consider the economic and paperwork impacts of the proposed rule changes and their consistency with other U.S. export control regulatory regimes and U.S. trade policies, including the National Export Initiative and Export Control Reform Initiative.
- Unreasonable effective date – failure to give exporters enough time to comply before the rule becomes effective.

The issuance of this SNOPR, which includes explanatory rationales of the revisions proposed, provides another opportunity for the public to comment on changes DOE is considering with regard to part 810. Additionally, working together with the Department of Commerce, DOE completed an economic analysis that considers the potential impacts of the amendments contained in this SNOPR.

With respect to the effective date of the final rule, on December 2, 2011, DOE posted at http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035in Docket DOE-HQ-2011-0035 a clarification, in response to commenters' request, of the dates stated in the NOPR's proposed § 810.15 "Effective date and savings clause." DOE explained that the references to "October 7, 2011" and

"December 6, 2011" were placeholders calculated in the publication process for the NOPR. The effective date and savings clause of any final part 810 rule would be calculated from the publication date of the final rule and would provide sufficient time for exporters to comply with the rule as adopted.

2. Part 810 process improvements

Many commenters maintained that the part 810 approval process is unduly protracted, and that processing delays put U.S. suppliers at a competitive disadvantage with companies in other countries. Many concerns with the NOPR indicated less a problem with the merits of the proposed changes than with the commenters' belief that the proposed rule revisions would impermissibly broaden the scope of part 810. Given the reduced number of destinations proposed to be generally authorized, commenters expressed concern that the overall proposed changes to part 810 would mean even longer application preparation and DOE processing times for specific authorizations, resulting in lost business opportunities for U.S. companies during the authorization process. These commenters asked for changes to make the part 810 application processes more orderly and expeditious. Among the recommendations received were:

a. Make Part 810 processes more transparent, orderly, and efficient

The Department acknowledges commenters' concerns that the time frame for issuance of specific authorizations can impose business risks for companies seeking to make nuclear exports requiring specific authorization. The process can also be made more open and understandable. Accordingly, the Department has initiated a process improvement program with the goal of making the authorization process International Standards Organization (ISO) 9001 compliant. The Department is interested in receiving public comments on the process changes discussed in this notice as well as other suggestions and ideas on how to make the Department's authorization process more transparent,

efficient and comprehensible. As an initial step to improve understanding of the new part 810 application process, DOE is offering Figure 1, a simplified graphic decision tree, and Figure 2, a simplified process map.

Figure 1: Part 810 Application Decision Tree

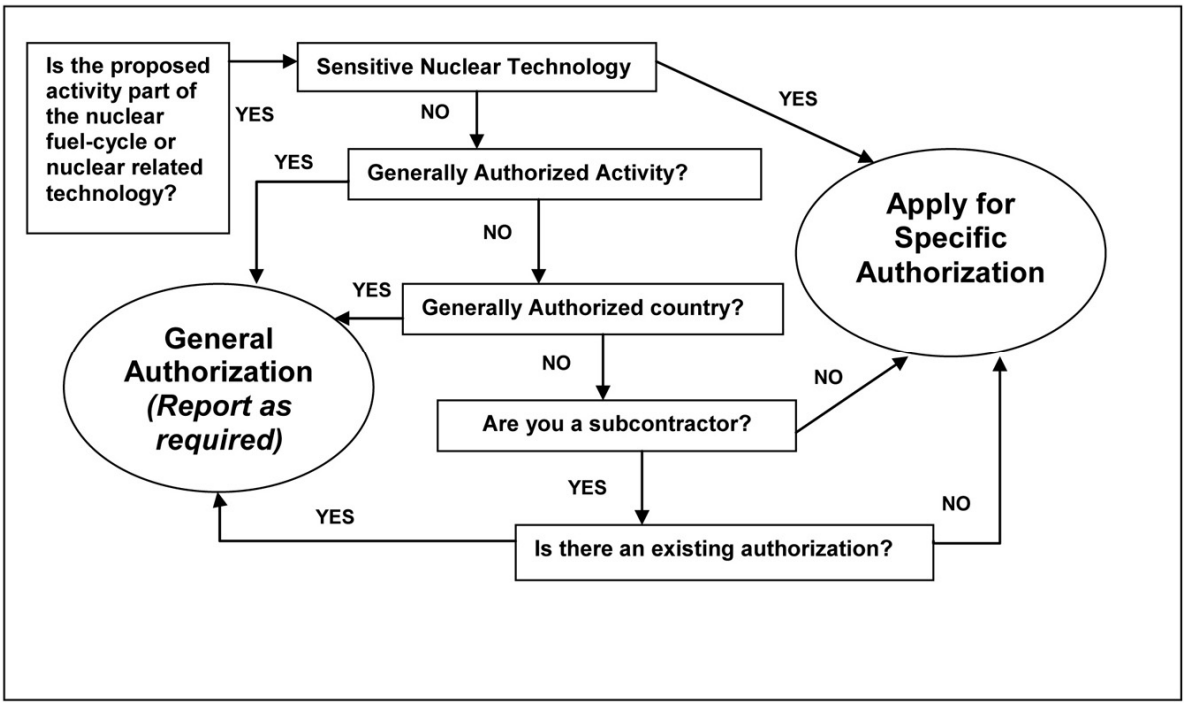
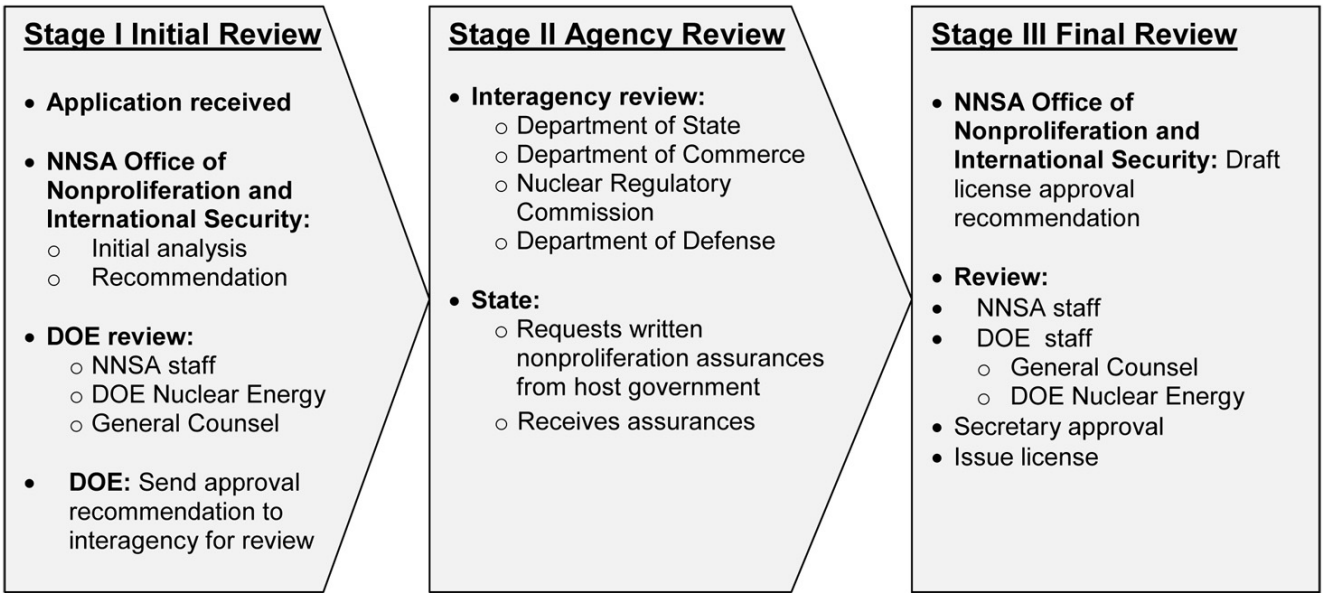


Figure 2: Part 810 Specific Authorization Process Steps



The following process changes to make the licensing process more open and efficient are under consideration:

- Awaiting receipt of foreign government nonproliferation assurances frequently delays the grant of part 810 specific authorizations. Sovereign foreign governments can be asked to respond promptly, but they cannot be mandated to do so. However, in concert with the Department of State, DOE is considering measures to improve the timeliness of foreign government response times.
- Reduce timeframes for internal DOE and interagency reviews.
- Develop and implement an e-licensing system to provide more uniform and transparent authorization standards and practices.

- Publish periodically, as appropriate, abstracts of general or specific authorizations that may be of general interest, redacting company-identifying and proprietary business information, to increase transparency.
- Publicly report on the number of specific authorizations sought, approved and rejected, and the average authorization processing time, to enhance transparency and accountability.
- Create expedited procedures for authorization of activities that present the lowest proliferation risk, as determined by the criteria proposed in § 810.9(b).

Many of these actions were proposed by commenters and have merit: as noted, DOE is initiating a process quality improvement program to make the processing of part 810 applications more orderly, expeditious, effective, and transparent. These internal process changes can be made independently of the rulemaking process. Consequently, conclusion of this part 810 rulemaking should not be delayed during the time internal Departmental process changes are developed and implemented. In the interim, DOE will continue to adhere to current interagency procedures for processing, reviewing and approving specific authorizations as set forth in the "Amendment to Procedures Established Pursuant to the Nuclear Nonproliferation Act of 1978." 49 FR 20780 (May 16, 1984).

b. Specific authorization practices

The NOPR proposed that specific authorizations "generally will be for a period up to five years." Commenters noted that the proposal was cast as a generalization about an authorization whose term should depend on specific circumstances. Upon consideration, the rule proposed today omits any reference to a time period for part 810 authorizations, leaving the term of specific authorizations to be established, as at present, on a case-by-case basis. There were no adverse comments on the proposed § 810.9 in the NOPR, which identifies the factors that would be considered by the Secretary in granting a specific authorization.

One commenter recommended that, prior to revoking a specific authorization before its expiration, DOE should be required to consult with the same agencies with which it consults before approving the specific authorization in the first instance. Today's supplemental proposed rule would not adopt specific regulatory language to require such a procedure because expeditious action may be required; however, interagency collaboration would be the norm in these circumstances.

c. Reports on authorized activities

Commenters noted that proposed § 810.12(d) of the NOPR referred to reporting requirements for any activity under proposed § 810.6, but subsection (f) stated that persons engaging in activities generally authorized under proposed § 810.6(b) would *not* be subject to reporting requirements under this section. The inconsistency was a drafting error, which has been corrected. Today's proposal continues the current requirement; reports would be required for generally authorized activities. New requirements have been proposed in today's SNOPR for reporting by U.S. companies with respect to their deemed export and deemed re-export employees.

B. Classification of Foreign Destinations

Under the authority of section 57 b.(2) of the AEA, the Secretary may authorize the export of assistance or the transfer of technology for the development or production of special nuclear material by persons subject to U.S. jurisdiction upon a determination that the activity will not be "inimical" to the interest of the United States. Classification of activities and foreign destinations as "generally authorized" or, conversely, the determination that other activities and destinations merit a specific authorization, is a matter committed to agency discretion. The Secretary's decision that a specific authorization is or is not required for a particular proposed export is based on U.S. nuclear and national security policies. Consonant with those policies, the Secretary therefore may determine that a country or entity is either generally authorized or requires a specific authorization. Under the AEA, the

Department is to promote widespread participation in the development and utilization of atomic energy for peaceful purposes. The AEA, however, makes national security the paramount concern. Consequently, assistance to, participation in, or technology transfer for, the development or production of special nuclear material outside the United States may be authorized only upon a determination by the Secretary that such activities will not be "inimical to the interest of the United States," such determination to be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Defense, and the Department of Commerce.

Multiple commenters objected that exports to some countries that do not require a specific authorization under the current part 810 classification approach would require a specific authorization under the NOPR that DOE proposed on September 7, 2011. Classification of activities by destination as "generally authorized" is an administrative tool to avoid unnecessary reviews of foreign atomic energy assistance activities in countries that present little or no proliferation risk, and are known nuclear trading partners. General authorizations reflect the assessment that the Secretary can make a non-inimicality finding regarding the provision of assistance and technology to particular countries on an advance programmatic basis, without performing a transaction-specific analysis or obtaining specific nonproliferation assurances from the government of the intended foreign recipient.

Historically, the Department's approach has been to identify those countries that pose inimicality concerns and to require exporters to obtain specific authorizations for assistance to those countries. Over time, the part 810 list of countries for which specific authorizations are required has become outdated. One country on the list no longer exists (Yugoslavia). Kazakhstan, Ukraine and the United Arab Emirates have become civil nuclear trading partners of the United States pursuant to an Agreement for Cooperation under section 123 of the AEA ("123 Agreement"). For example, in 2009 the United Arab Emirates entered into a 123 Agreement with the United States.

In recognition of the fact that global markets for peaceful nuclear energy and nuclear fuel cycle trading relationships have become more dynamic in recent years, the NOPR proposed to change the approach of classifying foreign destinations, from listing destinations for which a specific authorization is required to establishing a list of generally authorized destinations for which a specific authorization would not be required. The SNOPR continues the NOPR's proposed approach. The SNOPR includes a proposed Appendix that lists destinations to which unclassified nuclear assistance or technology transfers would be generally authorized. The Appendix would be maintained, revised, and updated in accordance with the requirements of the Administrative Procedure Act (5 U.S.C. § 553).

A destination is included on the proposed generally authorized list based on the Secretary's "not inimical" determination required by section 57 b. (2) of the AEA. Examples of types of considerations taken into account include the existence of a 123 Agreement with the United States, a full scope safeguards agreement with the IAEA, satisfactory experience as a civil nuclear trading partner, and compliance with international nonproliferation regimes. The proposed affirmative approach of listing the generally authorized destinations rather than the destinations requiring a specific authorization would be more consistent with the U.S. Government's national security obligations and nuclear nonproliferation policies.

Multiple companies and industry groups commented that under the proposed destination classification approach in the NOPR, there would be 77 current destinations for which specific authorization is not now required, but under the NOPR approach would be required. These commenters feared such reclassification would create an undue burden on nuclear commerce, and an administrative burden on U.S. companies and the Department, as more activities would require specific authorization.

DOE's analysis of civil nuclear trade with the countries whose general or specific authorization

classification would be changed indicates that the predicted burdens of the proposed change would be less substantial, and more manageable, than commenters claimed. Confidential reports companies file with DOE regarding generally authorized activities show minimal current civil nuclear commerce with countries that are "generally authorized" destinations under the current rule but that would not be generally authorized under the SNOPR. This confirms the conclusion of the Economic Impact Analysis DOE performed and which is summarized in Section V.A. That analysis indicates that potential trade volumes in countries proposed to be changed from generally authorized status, and where U.S. trade may be adversely affected by the proposed change, are a very small part of the global nuclear market, and they are about half the size of the markets in the three countries proposed to move to generally authorized status, and where U.S. trade would be favorably affected by the change. Many of those reports concern foreign nationals working at U.S. nuclear installations, not nuclear trade activity. Most importantly, any anticipated additional burdens do not overcome the sound national security reasons for the Department's proposed approach to classification of foreign destinations.

1. Generally authorized destinations

There were no objections from the NOPR commenters about the 47 destinations proposed to be placed on the generally authorized destinations list. Those destinations are listed in the proposed Appendix of this SNOPR. The Secretary has determined that the provision of assistance or transfer of technology related to the development or production of special nuclear material to these countries and the International Atomic Energy Agency as described in proposed § 810.2(b) is not inimical to the interest of the United States. Each country and the IAEA has in force a 123 Agreement with the United States, the country has an acceptable IAEA safeguards regime, or there is a Project and Supply Agreement among the country, the United States, and the IAEA. Many general authorization destinations are well established, long-term U.S. civil nuclear trading partners, such as Japan, Australia, Canada, the Republic of Korea, and the EURATOM member countries. Others, like Poland, South

Africa, Turkey, and Thailand, are less active in civil nuclear commerce, but have demonstrated interest in U.S. technical assistance by entering into discussions with U.S. companies for development of civil nuclear programs. As in the NOPR, three countries on the current specific authorization destination list are now proposed to be generally authorized destinations: Ukraine, the United Arab Emirates, and Kazakhstan. Each has entered into a 123 Agreement with the United States and actively is engaged in peaceful civil nuclear activities.

Several NOPR commenters noted that the United States has had a long, peaceful nuclear trading relationship with Mexico, even though the two countries do not have a 123 Agreement. Commenters claimed the proposed rule would disrupt the provision of technical assistance to the existing Laguna Verde nuclear power station, a U.S.-designed nuclear power plant that continues to rely on U.S.-supplied equipment and assistance. Commenters pointed out that this assistance has taken place under a Project and Supply Agreement among the United States, Mexico, and the IAEA. Similarly, Chile recently signed a Project and Supply Agreement with the United States and the IAEA concerning the supply of fuel to two research reactors in Chile. In addition, Mexico and Chile are parties to the Treaty on the Nonproliferation of Nuclear Weapons (NPT) and have safeguards agreements with the IAEA, including Additional Protocols. These facts are sufficient for the Secretary to make a non-inimicality determination. The Department has considered the comments in light of the Mexico Project and Supply Agreement and has determined that certain specified transfers will not be inimical to U.S. interests. The Department proposes in this SNOPR to include in the Appendix to this part those activities in Mexico related to IAEA INFCIRC/203 Parts 1 and 2 and INFCIRC/825, and activities in Chile related to IAEA INFCIRC/834..If the public has any comments regarding other agreements equivalent to 123 Agreements, as a basis to designate additional countries as generally authorized, DOE would welcome them.

2. Continued specific authorization destinations

Assistance or the transfer of technology related to the development or production of special nuclear material to 73 destinations that are on the current § 810.8(a) list of specific authorization destinations would continue to require specific authorization under today's proposed rule. Historically, most of the specific authorization destinations did not have 123 Agreements, comprehensive safeguards, or similar agreements with the IAEA, so any proposed assistance presented actual or potential proliferation risks that merited close scrutiny. Countries in this group include Afghanistan, Belarus, Iran, Iraq, Israel, Democratic People's Republic of Korea, and Pakistan. Some countries are in volatile or unstable regions. No NOPR commenters objected to retaining the specific authorization requirements for countries that currently require specific authorization, except with respect to China, India and Russia.

Multiple commenters advocated moving China, India, and Russia from the specific authorization list to the general authorization list. They stressed the fact that the United States has entered into 123 Agreements with each country, and that each country already has nuclear weapons and the technology to produce fissile material in support of such programs. They asserted that requiring applicants to secure a specific authorization for transfers to those countries hampers the ability of U.S. companies to compete effectively in global civil nuclear commerce.

After duly considering the comments and consulting with the Departments of State, Commerce and Defense, and the Nuclear Regulatory Commission, DOE remains of the view that it is not appropriate to change the part 810 specific authorization status of these three countries at this time. Continuing their current status is justified for diplomatic and national security reasons, and in the case of India, for legal considerations. For India, the end-user accountability requirements Congress enacted in the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22

U.S.C. 8001) make it infeasible to classify India as a generally authorized destination. The information required to be submitted in an application for a specific authorization for part 810 exports to India is needed to provide information for the project-by-project and end-user review accountability and reporting with respect to India as required by that statute. China and Russia are nuclear weapons states that have not provided the level of transparency regarding the division between their respective civilian and military nuclear programs to warrant general authorization of transfers of technology and assistance for peaceful use. DOE has granted numerous nuclear technology export authorizations to both China and Russia over the years. DOE would expect to continue making such authorizations in the future, based upon consideration of the specific facts of each proposed transaction.

DOE recognizes that increasing the number of destinations for which specific authorization is required has the potential to increase the time required to process a larger number of part 810 applications. If the SNOPR as proposed today is adopted, DOE will closely monitor application processing times as it works to improve the part 810 approval process consonant with maintaining the ability of U.S. companies to compete effectively in global markets.

3. Generally authorized destinations proposed to require specific authorization

DOE received many comments about the number of current generally authorized destinations that are proposed to be specifically authorized destinations. Most of these countries have no civil nuclear programs, are unlikely to have nuclear programs in the foreseeable future, have not signed a 123 Agreement with the United States, or are not parties to the NPT. Countries in this group include Belize, Ethiopia, Lebanon, Liechtenstein, and Nepal. There is no reason to place countries that have not expressed interest in civil nuclear trade on the proposed generally authorized list. Without such interest, there is little reason or basis for the Secretary to make a non-inimicality finding. Since the NOPR's publication, the 123 Agreements of Peru and Bangladesh have expired. Accordingly, Peru

and Bangladesh have been removed from the proposed generally authorized destinations set forth in the proposed Appendix in today's SNOPR.

Some commenters suggested that U.S. nuclear companies may want to hire citizens from what would be former generally authorized destinations, presenting a "deemed export" issue for the employer. Similarly, commenters asserted that some U.S. companies are interested in marketing to, or sourcing nuclear goods and services from, these countries for use in the United States. Concerns related to deemed exports, marketing and supply chain activities are more appropriately addressed in Section IV.C. 3. as an activity issue, rather than as a destination issue. There is no need to add destinations to the proposed generally authorized list to resolve activity issues.

4. Emerging civil nuclear trading partner countries

Some commenters objected to DOE's proposed classification of emerging civil nuclear countries such as Saudi Arabia, Jordan, Philippines, and Malaysia as requiring specific authorization. Commenters noted these countries are planning to develop indigenous nuclear power programs but have not yet concluded 123 Agreements with the United States. DOE supports growing civil nuclear trade for peaceful purposes with these countries. However, granting them generally authorized status at the present time would be premature, since there is little basis for a non-inimical determination. Information needed for such a determination normally is provided through a Nuclear Proliferation Assessment Statement which is required for Section 123 Agreements. The first step for consideration as a candidate for classification as a generally authorized destination generally would be a country's conclusion of a 123 Agreement with the United States. After that, DOE would consider factors such as compliance with international nonproliferation regimes prior to designation of the country as a generally authorized destination. DOE would also consider adding to the Appendix other countries that are party to a Project and Supply Agreement with the United States and the IAEA, even if they do not

have a 123 Agreement. Special effort will be made to work with such countries to engage with their governments to develop swift processes for obtaining nonproliferation assurances until such time as they can be added to the general authorization list.

Conclusion:

DOE proposes in today's SNOPR to retain the destination classifications proposed in the NOPR unchanged, except for the addition of Mexico and Chile (with respect to specific activities under the applicable IAEA Information Circulars) to the list of generally authorized destinations, the addition of the IAEA as a generally authorized destination, and the deletion of Bangladesh and Peru as generally authorized destinations.

C. Activities Requiring Part 810 Authorization

1. Special nuclear material nexus requirement

Part 810 implements provision (2) of AEA section 57 b. for activities:

1) By any person;
2) Directly or indirectly engaging or participating in the development or production of special nuclear material; and
3) Outside the United States.

Multiple commenters claimed the proposed regulation in the NOPR would extend the scope of part 810 to activities that do not assist or participate in the development or production of special nuclear material. Because the AEA prohibits (subject to stated statutory conditions) *indirect* participation in the development or production of special nuclear material, the Secretary has broad discretion to determine which activities, in addition to those which directly involve engagement or participation in the development or production of special nuclear material outside the United States, indirectly constitute such engagement or participation and consequently are within the scope of part 810 and need

to be specifically authorized. This discretion is balanced against the declared policy of the AEA in section 1 b. that the "development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise." Whether an activity should be generally authorized or specifically authorized is a policy matter.

2. Activities supporting commercial power reactors

Multiple parties commented that the scope of "nuclear reactor" activities in § 810.2 should be limited to reactor technologies that produce special nuclear material and are of significant proliferation concern. Commenters recognized that assistance to foreign production reactors should be subject to specific authorization but maintained that some forms of assistance to foreign power reactors have little or no relationship to the production of special nuclear material. Commenters noted that the low-enriched uranium in fuel is subject to material accountability and control programs from the enrichment facility to the reactor. They pointed out that power reactor production of spent nuclear fuel is not a particularly proliferation-sensitive activity because spent nuclear fuel is not useful without reprocessing, an activity that directly produces special nuclear material, and requires specific authorization.

Assistance to foreign power reactors historically has been within the scope of part 810, and DOE believes it should remain so because the reactors use special nuclear material as fuel and produce special nuclear material (the plutonium contained in spent nuclear fuel). Historically, part 810 has generally authorized assistance to commercial power reactors in most nations and safety-related assistance even to reactors in specific authorization countries. Upon consideration of the comments, the Department believes that the interest in an orderly and expeditious part 810 application review process would be advanced by requiring a specific authorization only for assistance relating to the

items 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. Today's proposed definition of "nuclear reactor" in § 810.3 and the scope of part 810 in proposed § 810.2 are consistent with the NRC's definition in 10 CFR 110.2 and list of NRC-regulated components at Appendix A to Part 110-Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority, and items within what is commonly considered to comprise the nuclear steam supply system. These proposed changes to § 810.3 and § 810.2 are responsive to commenter requests for a clear description of reactor technology subject to part 810 and consistency with other regulatory programs.

3. "Deemed exports" and "deemed re-exports"

Many commenters claimed that requiring U.S. employers to obtain specific authorization for their foreign employees working in the United States, combined with the reduced number of generally authorized countries under the proposed approach to destination classification, could prevent U.S. nuclear employers from hiring the best available qualified people and adversely impact the operation of U.S. nuclear facilities and the ability of vendors to compete globally. It is well established that any transfer of part 810-controlled nuclear technology to a foreign national is "deemed" to be an export to the country of citizenship or lawful permanent residence of the individual, whether the transfer takes place in the United States (a "deemed export") or abroad (a "deemed re-export"). Commenters contended that providing nuclear technology to foreign employees so they can work at nuclear companies in the United States cannot lead to even the indirect production of special nuclear material in foreign facilities, and any risk of unauthorized exports by these employees would be mitigated if the U.S. employer: (1) follows the NRC access authorization standards for facility access or access to information such as those found in 10 CFR part 10 (Criteria and Procedures for Determining Eligibility for Access), part 26 (Fitness for Duty) or part 73 (Physical protection of plants and materials) for the

foreign employee; and (2) enters into a confidentiality agreement with the employee. Commenters recommended that DOE rely upon employer compliance with NRC access requirements for non-U.S. citizens working in U.S. nuclear facilities and employee confidentiality agreements to prevent wrongful use or disclosure of the employer's sensitive nuclear technology. The commenters asserted that compliance with this procedure would suffice to protect the technology, obviating the need to require duplicative access authorization under part 810.

DOE considered these comments and, after consultation with the NRC, proposes to accept the commenters' recommendation. Under today's SNOPR, § 810.6 would generally authorize technology access to citizens and nationals from specific authorization countries working for U.S. employers in the United States at an NRC-licensed facility provided that the employee:

- Is lawfully employed by or contracted to work for a U.S. employer in the United States;
- Executes a confidentiality agreement with the U.S. employer that safeguards the technology from unauthorized use or disclosure; and
- Has been granted unescorted access in accordance with NRC 10 CFR part 10, part 26 or part 73 at an NRC-licensed facility.

The employer authorizing access to the technology would be required to report the access as proposed in § 810.12(g).

This approach would recognize authorization under established NRC standards and the employer's interest in protecting its confidential information as sufficient control of technology transferred to foreign employees working in the United States. This approach is intended to address situations comparable to those covered by the Department of Commerce's deemed export rule in 15 CFR 734.2(b)(2) of the Export Administration Regulations. U.S. employers seeking to employ foreign nationals to engage in activities requiring specific authorization as described in proposed § 810.7 would

continue to require a specific authorization under part 810 in all circumstances.

The SNOPR amends the definition of "foreign national" as proposed in the NOPR; the current regulation does not utilize the term "foreign national". This term was included, and defined, in the NOPR to describe the category of individuals with respect to whom citizenship, employment background, and other information is required before specific authorization for technology transfers as described in § 810.11(c) of the NOPR may be approved; i.e., deemed exports or deemed re-exports. In the SNOPR, the proposed definition of "foreign national" has been revised to add the phrase "but excludes U.S. lawful permanent residents and protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)". This proposed addition clarifies the definition of "foreign national" by stating in one place who is and is not considered to be a foreign national; in the NOPR this matter was set forth in proposed § 810.11(c).

Proposed §§ 810.11 and 810.12, as in the NOPR, would make explicit DOE's current practice of requiring the employer to provide detailed information on the foreign national employee's background, a description of the subject assistance or technology, a copy of the confidentiality agreement with the employee, and written nonproliferation assurances by the foreign national employee. Proposed § 810.12, similar to the requirements of the NOPR, would delineate the reporting requirements for U.S. companies giving foreign national employees access to part 810-controlled technology.

Finally, it has been DOE's practice to consider nuclear technology transfers to individuals who are lawfully admitted for permanent residence in the United States or who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)) the same as transfers to U.S. citizens, and therefore not exports. This practice is reflected in proposed § 810.2(c)(6) as an exemption from part 810.

4. Technology transfers to individuals with dual citizenship or permanent residency

Several companies and industry groups commented that the provisions in proposed § 810.11(c) of the NOPR did not provide clarity on the application of the rule to individuals with dual citizenship or citizens of specific authorization countries with lawful permanent residence in a generally authorized country.

Commenters recommended that citizenship for part 810 purposes be determined by the country of the individual's most recent citizenship or permanent residence – rather than the country with the more restrictive authorization status. Use of the most recent country of citizenship or permanent residence would mean, for example, that a transfer of nuclear technology to an individual who is a citizen of a special authorization country and who later obtained lawful permanent residence in a generally authorized country would be generally authorized since the transfer of nuclear technology would be to a generally authorized destination. Commenters represented that adoption of this approach would enable nuclear partner countries in the European Union to comply with European Union non-discrimination laws.

The SNOPR does not resolve the dual nationality/lawful permanent residence issue. After due consideration, DOE has decided that it is not appropriate to address this matter by rule. Unlike exports subject to the Department of Commerce's Export Administration Regulations, nuclear technology transfers administered by DOE under part 810 require further scrutiny of the end use, in order to ensure adherence to United States nonproliferation commitments as a member of the Nuclear Suppliers Group. The authorization decisions in these situations are fact-specific, and DOE will continue to deal with them on a case-by-case basis.

5. Operational safety activities

In 1993, part 810 was revised to establish a new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in specific authorization countries. The 1993 general authorization built on the prior general authorization for assistance to prevent or correct an existing or imminent radiological emergency posing a significant danger to public health and safety. Unlike for other generally authorized activities, the operational safety authorization was not automatic. It required DOE's written approval within 30 days, rather than the longer review and approval process required for specific authorizations. To assist applicants in determining whether the assistance they proposed qualified for "fast track" treatment, a definition of "operational safety" was added to § 810.3 "Definitions."

The NOPR proposed to eliminate the 1993 fast track general authorization for operational safety, but to retain the general authorization to address current or imminent radiological emergencies when no other means to address the emergency is available. The NOPR also proposed to delete the definition of "operational safety." Multiple commenters objected that the NOPR changes would restrict U.S. public and private entities from participating in cooperative efforts to promote nuclear safety. They favored retaining the fast track general authorization.

The 1993 revision to part 810 was necessary to authorize expedited assistance to civilian nuclear reactors in specific authorization countries. Commenters on the NOPR pointed out that with DOE's proposed destination classification approach, there would be no specific authorization country list. Operational safety assistance from U.S. companies therefore would need specific authorization in many countries that are currently generally authorized destinations.

A primary purpose of the 1993 amendments was to recognize the public interest in civilian reactor safety and the U.S. Government's interest in international cooperation to improve the safety of

reactors worldwide. Commenters pointed out that assessments and benchmarking of U.S. and foreign reactor practices performed by international teams supported by the Institute of Nuclear Power Operators and the World Association of Nuclear Operators and U.S. nuclear companies serve the U.S. national interest in global reactor safety. The Department has determined that activities approved or carried out by the Nuclear Regulatory Commission or the Department of State may be either exempt under § 810.2(c)(1) or generally authorized under § 810.6(d) of today's proposed regulations.

A second purpose of the 1993 amendments was to "enable U.S. firms to compete more effectively with foreign competitors for safety-related nuclear business." This objective is consistent with the policy statement in section 1 b. of the AEA supporting the development, use, and control of peaceful nuclear energy and strengthening free competition in private enterprise. Commenters asserted that eliminating the fast track authorization would reduce the ability of U.S. firms to compete effectively for safety-related nuclear business. Commenters explained that U.S. companies are not the exclusive source of services for operating reactors, and if U.S. regulations inhibit U.S. companies from doing work on a foreign reactor, non-U.S. companies will provide the service. Commenters maintained that eliminating the "fast track" would reduce U.S. competitiveness in global markets and U.S. Government influence on foreign nuclear programs.

A third purpose of the 1993 amendments was to "eliminate unnecessary paperwork and time-consuming bureaucratic delays" when public safety was at stake. The current "fast track" procedure combines a prior notification and approval requirement with a requirement that DOE review and act on the request on an expedited basis. The Department's experience with fast track requests has not been entirely satisfactory. The "fast track" has been used very seldom in the years since 1993, and many requests have not tied proposed assistance to established safety standards. Unsupported assertions that a service is safety-related to obtain expedited consideration and approval for an activity that merits a full-scale review do not serve the interests of industry or national security. However, the system

worked as intended during the 2011 Fukushima Daiichi disaster, and DOE promptly used the existing emergency authority to permit rapid U.S. industry response to Japan's request for assistance.

Based on these considerations, DOE today proposes to retain the fast track procedure for safety-related requests, with some modifications as follows:

- Proposed § 810.6(c)(1) would generally authorize assistance to prevent or correct a current or imminent radiological emergency with 48 hour prior notice to DOE;
- Proposed § 810.6(c)(2) would continue the fast track general authorization for safety-related assistance to existing safeguarded foreign commercial reactors. The assistance must support the reactor operator's compliance with national or international safety requirements or standards. To obtain fast track approval, the applicant would be required to provide DOE notice at least 45 days before the start of the activity, and could proceed only after receiving DOE's approval in writing;
- Proposed § 810.6(c)(3) would generally authorize safety-related assistance to nuclear power plants in the United States; and
- Proposed § 810.6(d) would generally authorize assistance pursuant to exchange programs approved by the Department of State in consultation with DOE, in addition to the exemption in proposed § 810.2(c)(1) for activities authorized by other agencies.

6. Offshore activities: "control-in-fact"

Some companies and industry groups commented on the NOPR that the existing § 810.2(b) provision that makes part 810 controls applicable to activities conducted abroad by foreign licensees, contractors and subsidiaries subject to control by persons under U.S. jurisdiction is overly broad and confusing. One commenter recommended that applicability be limited to foreign-controlled subsidiaries, with control determined by reference to corporate governance arrangements. The applicability

determination depends on the degree of control that the person subject to U.S. jurisdiction has over the assistance transaction, not the legal status of its subsidiary or other affiliate. The inquiry to determine whether there exists sufficient control to make part 810 applicable to a given proposed transfer of nuclear assistance depends on the specific circumstances of the transaction, not merely corporate governance provisions. DOE has considered the comments and today proposes to retain proposed § 810.2(a)(2) substantially as proposed in the NOPR and not to include a mechanistic formula to determine when control-in-fact exists.

7. Back-end activities

The proposed regulations in the NOPR expressly added certain back-end of the fuel cycle activities that were not explicit in prior versions of the regulations: post-irradiation examination of spent nuclear fuel; storage of irradiated nuclear materials; movement of irradiated nuclear materials; and processing of spent irradiated nuclear materials for disposal (e.g., processing for burial or vitrification). Multiple commenters maintained that these activities have no connection to the development or production of special nuclear material and pose an insignificant proliferation risk. They maintained DOE should not regulate these activities under part 810.

Separation and reprocessing of special nuclear material are back-end activities that have always been covered by part 810 but were not explicitly identified in the regulations. The NOPR proposed to specifically identify the back-end activities because they can be a part of a separation and reprocessing program. Today's SNOPR would make no change to the current status of back-end activities. Back-end activities related to special nuclear material reprocessing would continue to require specific authorization. Otherwise, back-end activities would not be subject to part 810.

8. NRC, Commerce, and State approved activities

Existing provisions of § 810.2 "Scope" exclude activities authorized by the NRC from the scope of part 810. Commenters recommended that the proposed regulations extend that exclusion to activities licensed by the Departments of Commerce and State, to avoid duplicative regulation. The rule proposed today adopts that recommendation. In cases where a request for an export license involves multiple agency jurisdictions, the responsible agencies would consult and determine which agency would exercise jurisdictional control over the application.

9. Medical isotope production

Various commenters said the proposed definition of "reprocessing" in the NOPR was too broad because it could have the unintended consequence of making medical isotope production subject to part 810. DOE considered the comments and has deleted the definition of reprocessing in today's SNOPR. The SNOPR adds a proposed exemption in § 810.2(c)(5) for the production or extraction of radiopharmaceutical isotopes when the process does not involve use of special nuclear material. Extraction of Molybdenum-99 from irradiated targets for medical use is proposed to be generally authorized in this SNOPR, in proposed § 810.6(g).

10. Activities carried out by IAEA personnel

Some commenters criticized as unduly restrictive the NOPR's proposal to restrict the general authorization for IAEA activities to personnel "whose employment is sponsored by the U.S. Government." The purpose of proposed § 810.6(e) is to enable full U.S. cooperation with IAEA personnel who are not citizens or nationals of generally authorized countries or with individuals working for the IAEA in specific authorization destinations. The IAEA therefore has been added to the list of generally authorized destinations in the proposed Appendix. The SNOPR proposes to generally authorize activities carried out by individuals who are full-time employees of the IAEA, or whose

employment or work is sponsored or approved by the Department of State or Department of Energy. Under the SNOPR, engagement by IAEA employees in activities covered by proposed § 810.7 would still require specific authorization.

11. Transfer of public information and research results

Under the current rule, the transfer of "public information" is generally authorized. The NOPR proposed to exempt "public information" from the scope of part 810. Commenters did not object to that change. However, commenters claimed that DOE's application of the term "public information" had on occasion been unduly restrictive and burdensome. Multiple companies and industry groups commented that adoption of the NOPR's proposed definitions of "technology" and "technical data" would unduly restrict the information that could be transferred without a specific authorization. They also alleged inconsistencies in the way various types of information are defined in part 810 compared to other U.S. export control programs. Similarly, multiple academic institutions and organizations commented that the NOPR's definition of "basic scientific research" was too narrow and was inconsistent with Presidential Decision Directive 189 and the Department of Commerce controls that use the term "fundamental research."

DOE considered the comments and proposes today to replace the term "public information" with the terms "publicly available information" and "publicly available technology," and to replace the term "basic scientific research" with "fundamental research." The proposed definitions of these terms are intended to comport with usages in other export control programs, be consistent with regulatory exclusions in those programs, and generally to reduce the burden of regulatory compliance for industry and academic institutions.

12. Transfer of sales, marketing, and sourcing information

Multiple commenters observed that the distinction between publicly available information,

which can be disclosed or transferred without restriction, and technical information relating to proliferation-sensitive enrichment and reprocessing activities, which must always be specifically authorized, is not well delineated with respect to activities important to U.S. industry's competition for civil nuclear trade in global markets. Commenters noted that there is a body of proprietary information that U.S. nuclear energy companies need to share with foreign customers or vendors that is not useful to develop or produce special nuclear material. The commenters identified several types of reactor information transfers they believed should be generally authorized:

- Commercial information – (e.g., prices, warranties, and representations) is normally included in marketing proposals or bids. Such information is proprietary, but not technical.
- General technical information – (e.g., general design information, service offerings, and performance capabilities) is normally included in bids and proposals. The commenters stated that the information is not sufficiently detailed to assist in the production of SNM.
- Sourcing requirements information – (e.g., detailed component drawings and specifications) is normally provided to foreign vendors in order to permit them to bid for business from U.S. companies. The covered sourcing information would be for specific components and services to be used by customers of U.S. vendors, not for production of SNM outside the United States.
- Due diligence information – Commercial and financial information normally provided to a potential foreign investor fulfilling its legal due diligence obligation to owners.
- Trade mission information – Exchanges of general commercial and technical information with foreign entities in the course of government- or industry-sponsored events designed to promote international commerce.
- Plant tour information – Information obtained visually during U.S. facility visits by foreign business or government officials for commercial or regulatory purposes.

Commenters claimed that a general authorization for disclosure of these types of information is appropriate because it is not useful for the production of special nuclear material and is conveyed subject to agreements that place restrictions on the recipient's use. It is in the technology owner's interest to be sure the recipient only receives the information it needs to evaluate a proposed transaction and can only use the information for limited specified purposes. The commenters also were concerned that requiring a specific authorization for sales and sourcing activities would impose regulatory compliance costs and delays that could restrict U.S. company participation in growing global nuclear markets.

Commenters recommended that information conveyed for marketing and sourcing purposes be generally authorized if it is an established business practice for the information to be disclosed to support sales and sourcing programs, and if neither the export nor the re-export of the information would include detailed design, production, or manufacturing technology sufficient to permit the production of special nuclear material. They pointed to the License Exception "TSU" in the Department of Commerce's Export Administration Regulations, EAR section 740.13(b), and the Department of State's 2010 decision to drop prior International Traffic in Arms Regulations (ITAR) notice and approval requirements for certain proposals for military equipment (75 FR 52622) as reasonable approaches to this issue.

The Department recognizes that competition for nuclear business is fierce, and many foreign competitors of U.S. nuclear companies are state-sponsored enterprises, thus offering foreign customers and vendors attractive alternatives to U.S. companies as trading partners. Part 810 is meant to enable U.S. companies to compete effectively to garner sales, and secure components and services that may not be available in the United States. However, the purpose of part 810 is different from the purposes of the ITAR and EAR. Part 810 does not regulate marketing or sourcing activities as such, only the provision of assistance and the transfer of technology. Marketing or sourcing activities are regulated

under this part or exempt based on the technical data transferred, not the use of the data. If controlled technical data is transferred in a bid, proposal, solicitation, trade show, or plant tour, the activity would be subject to part 810. If no technical data were transferred, the transaction would not be within the scope of part 810 as proposed in § 810.2. If a company was uncertain whether a transfer was exempt or requires authorization, it could contact DOE. Companies have sought and received guidance from DOE before investing marketing resources in order to determine that its services could be authorized if it won a contract. Accordingly, the SNOPR does not propose a blanket exemption for marketing and sourcing activities.

The benefit of a blanket general authorization would be limited for several reasons. First, most marketing and sourcing transfers are to generally authorized countries. Second, most proposals and marketing communications do not contain technical data that would enable the recipient to develop or produce special nuclear material. Third, under the current part 810 and the SNOPR, companies can request guidance or interpretations to inform their proposals and solicitations. In the absence of any information from interested parties quantifying expected sales and sourcing activity that would be burdened by a specific authorization requirement, there is no general authorization proposed today for this activity.

13. Transfer of "Americanized" Technology

Two commenters asserted that the purpose and intent of the NOPR's proposed definition of "cooperative enrichment enterprise" were unclear. They said that to build and operate their U.S. enrichment facility, it was necessary to "Americanize" foreign technology, adapting it to meet U.S. regulatory and industry standards. The Americanization process requires collaboration with foreign personnel. They acknowledged that the transfer of U.S. technology to a foreign recipient is subject to a specific authorization and U.S. consent rights, and did not object to the conditions imposed by proposed

§ 810.9(d). They were concerned, however, that proposed § 810.9(d) would unreasonably limit the foreign supplier from using or retransferring Americanized technology even when the retransfer was done in accordance with Nuclear Suppliers Group (NSG) guidelines.

Other commenters raised the same issue with respect to determining when any software commingling U.S. and foreign technology would be considered "U.S.-based" for export control purposes. They claimed uncertainty about "contamination" of foreign-origin technology with U.S. technology would discourage nuclear cooperation and incorporation of U.S. technology in foreign reactors. They recommended that DOE adopt a *de minimis* standard, exempting re-exports if the U.S. content is less than 25% of the total value of the software or technology.

The purpose of the proposed change regarding cooperative enrichment enterprises in the NOPR was to enable multinational entities to function effectively, while maintaining DOE oversight and consistency with NSG guidelines. As proposed today, part 810 would not limit the ability of a cooperative enrichment enterprise that receives a specific authorization from using and retransferring foreign technology in accordance with the authorization. The proposed new rule should not affect cooperative enrichment enterprises either positively or negatively. Authorizations for cooperative enrichment enterprises and other technology transfers by collaborative enterprises would only be made on a case-by-case basis, considering all the relevant facts and circumstances relevant to proliferation. There may be circumstances when a transfer is *de minimis*, but the determination should be made on the case specific facts. A blanket exception based on an arbitrary monetary value would not be appropriate. No change to the proposal contained in the NOPR is warranted.

D. Explanation of proposed changes to part 810 terms

The existing regulation has 24 defined terms. The SNOPR proposes to add or substantially revise 22 terms, delete 2 terms, and leave 14 terms essentially unchanged, for a total of 36 defined terms in the proposed regulation.

The following terms would be added by the SNOPR to update the terms used in Part 810 to make them consistent with terms used in U.S. export control programs and NSG guidelines: Development, Cooperative enrichment enterprise, Enrichment, Fundamental research, Fissile material, Production, Technical assistance, Technical data, Technology, and Use. The following terms would be added or revised in line with the proposed changes in the approach to authorized destinations and authorized activities: Specific authorization, Production accelerator, Production accelerator-driven subcritical assembly system, Operational safety, General authorization, Production subcritical assembly, Publicly available information, Publicly available technology, and Foreign national. The term "Country" was proposed to be added to clarify that Taiwan would be covered under this proposed rule, consistent with section 4 of the Taiwan Relations Act, 22 U.S.C. § 3303, and the United States' one-China policy, under which the United States maintains unofficial relations with Taiwan. These terms were proposed to define administrative terms: Secretary, Country, and DOE. The following terms are proposed to be retained with no change except technical edits or format changes: Agreement for cooperation, Atomic Energy Act, IAEA, Sensitive nuclear technology, Source material, Special nuclear material, Person, Classified information, Nuclear reactor, NNPA, Production reactor, Restricted Data, NPT, and United States. The following terms would be deleted as obsolete or unused: Non-nuclear-weapon state and Open meeting.

V. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to be an economically significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget. The required economic impact analysis has been prepared by the Department of Energy. The analysis examined the size of the nuclear markets affected by the proposed changes and forecasted that the technology export markets that should be positively affected by the change in export destination classification are likely to be larger than those which could be adversely affected. The expected range of trade volume differences between the positively and adversely affected market segments is in the range of $32 million per year to $75 million per year over the period 2013 to 2030. In addition to this calculation, DOE presents in the economic impact analysis theoretical annualized costs and benefits at 3% and 7% discount rates based on one industry-generated forecast. It should be noted that the discounted numbers, approximately $23 million in costs and $43 million in benefits, reflect one hypothetical analysis that, as discussed in the economic analysis, is based on nuclear capacity forecasts. The analysis concluded that the greatest potential for impact resulting from the changes proposed in this rulemaking could occur in connection with transactions occurring in destinations that would be moved from general to specific authorization. Because significant trade can and does occur with countries for which specific authorization would be required, the actual impact would be much smaller than the total volume of trade. The actual effect of the change in annual U.S. technology export trade volumes is likely to be in the range of $5 to $50 million per year over this same period. The analysis also noted that it assumed that all destinations that are not on the Appendix's generally authorized list will remain off the list. It is likely, however, that

some countries that are developing indigenous civil nuclear programs will enter into Agreements for Cooperation and would be added to the Appendix of generally authorized destinations, thereby obviating any impacts related to the specific authorization process. The analysis is publicly available at the DOE website http://nnsa.energy.gov/nonproliferation/nis/10CFRPart810 , the Department of Commerce website http://www.trade.gov/mas/ian/industryregulationmasinput/index.asp and at http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035under "Assistance to Foreign Atomic Energy Activities".

B. National Environmental Policy Act

DOE determined that today's SNOPR 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 website: http://www.gc.doe.gov.

Today's proposed changes to part 810 are summarized in Section II of the Preamble. DOE has reviewed the changes under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed changes clarify the authorization requirements pertaining to the provision of assistance to foreign atomic energy activities and make changes in response to the comments received in response to the NOPR. They do not expand the scope of activities currently regulated under 10 CFR part 810.

The requirements for small businesses exporting nuclear technology abroad would not substantively change because the proposed revisions to this rule do not 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 have not changed in a manner that would provide 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. Out of 56 businesses impacted by part 810, only 5 qualify as small businesses. The number of requests for authorization or reports of generally authorized activities from each small business on average was one or less per year, while the larger businesses can have as many as 100 requests for authorization or reports of generally authorized activities per year. The small 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 what these businesses need to do to receive a part 810 authorization. So, there would be no impact on their ability to move forward and conduct business in the same manner they have previously, except that the changes might make it easier by clarifying some terms used to define regulated activities. Generally

speaking, 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 assistance.

On the basis of the foregoing, DOE certifies the SNOPR 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 collection of information under this supplemental proposed rule was previously approved under Office of Management and Budget Control Number 1901-0263.

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. Subsection 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 supplemental 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 supplemental 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 supplemental 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 supplemental 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 today's supplemental 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 the Office of Information and Regulatory Affairs 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. Today's 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.

K. Executive Order 13609

Executive Order 13609 of May 1, 2012, “Promoting International Regulatory Cooperation,” requires that, to the extent permitted by law and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each Federal agency shall:

(a) If required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably

anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) Ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) In selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) Reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) Such reforms in other circumstances as the agency deems appropriate; and

(d) For significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

DOE has reviewed this supplemental proposed rule under the provisions of Executive Order 13609 and determined that the rule complies with all requirements set forth in the order.

VI. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of today's supplemental proposed rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, on July 30, 2013.

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Ernest J. Moniz

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.

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, 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, 2273), and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 Stat. 3768; 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.

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.

§ 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(b)(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.

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 multi-national corporation.

Country, as well as government, nation, state, and all related terms, shall be read to include Taiwan, consistent with section 4 of the Taiwan Relations Act, 22 U.S.C. 3303, and the United States' one-China policy, under which the United States maintains unofficial relations with Taiwan.

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 Nonproliferation Act of 1978, Pub. L. 95-242, 22 U.S.C. 3201 *et seq*.

NPT means the Treaty on the Nonproliferation 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 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.

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 the 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.

Technology means technical 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 International Security (NA-24), Telephone (202) 586-7924.

(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.

§ 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 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 International Security, 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 International Security 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 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 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 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 within45 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, and may provide information cited in § 810.11(b); or

(3) Furnish operational safety information or assistance to existing, proposed, or new-build civilian nuclear power plants in the United States, provided DOE is notified by certified mail return receipt requested and approves the activity in writing within45 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; and

(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.

Unless generally authorized by § 810.6, 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

(c) Engaging in or providing technology (including technical assistance) for any of the following activities with respect to any foreign country (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 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, 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 recipient 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 recipient 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 recipient 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 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;

(2) Whether the recipient 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 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;

(3) Whether the recipient 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 recipient 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 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 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; 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) 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 for the employment. 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 the Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;

(3) A copy of any confidentiality agreement between the applicant and the foreign national as required by § 810.6(b)(2);

(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 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.

(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 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 the Department 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 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, or both.

(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 [*date 30 days after date of publication of final rule*] 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 [*date 30 days after date of publication of final rule*], but that require specific authorization under the regulations in this part, must request specific authorization by [*date 90 days after date of publication of final rule*] 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)
Colombia
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Hungary
Indonesia
International Atomic Energy Agency
Ireland
Italy
Japan
Kazakhstan
Korea, Republic of
Latvia
Lithuania
Luxembourg
Malta
Mexico (For all activities related to INFCIRC/203 Parts 1 and 2 and INFCIRC/825 only)
Morocco
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
South Africa
Spain
Sweden
Switzerland
Taiwan
Thailand
Turkey
Ukraine
United Arab Emirates
United Kingdom