

**Guidance to the Revised  
Part 810 Regulation:  
Assistance to Foreign Atomic Energy  
Activities**

**Department of Energy  
National Nuclear Security Administration  
Office of Nonproliferation and Arms Control**

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## INTRODUCTION

The Department of Energy (DOE) has statutory authority to permit participation or engagement in foreign development or production of special nuclear material, such as transferring unclassified nuclear technology or providing assistance to foreign nationals, countries or entities. In accordance with § 57 b.(2) of the Atomic Energy Act of 1954 (AEA), persons may engage, directly or indirectly, in the production or development of special nuclear material outside the United States only upon authorization by the Secretary of Energy, with the concurrence of the Department of State (DOS) and after consulting with the Departments of Defense (DoD) and Commerce (DOC), and the Nuclear Regulatory Commission (NRC).<sup>1</sup> This requirement, as implemented by DOE, applies to technology transfers and assistance related to certain nuclear fuel-cycle activities, commercial nuclear power plants, and research and test reactors. Covered transfers may include the transfer of physical documents or electronic media, electronic transfers or the transfer of knowledge and expertise.

Part 810 of Title 10, Code of Federal Regulations (Part 810) implements AEA § 57 b.(2), pursuant to which the Secretary has granted a general authorization for certain categories of activities which the Secretary has found to be non-inimical to the interest of the United States – including assistance or transfers of technology to the “generally authorized destinations” listed in Appendix A to Part 810. Other activities within the scope of Part 810 -- including transfers of technology or provision of assistance to destinations not listed in Appendix A (“specifically authorized” destinations) – require a case-by-case specific authorization from the Secretary. A specific authorization is also required for any provision of “sensitive nuclear technology” (enrichment, reprocessing of fuel, and heavy water production), as well as technology for certain sensitive activities, regardless of the destination’s status under the regulation. The determination of which destinations are generally authorized depends on a number of factors, including the existence of a bilateral “123 Agreement” with the United States, the country’s nonproliferation credentials, and the significance and scope of its nuclear trade relationship with the United States.

In February 2015, DOE issued its final rule revising Part 810, the first comprehensive update of the regulation since 1986. The regulation has been modernized to: (1) articulate clearly the activities and technologies that are within the scope of Part 810; (2) provide expanded general authorizations for operational safety activities, the separation of medical isotopes from spent nuclear fuel, and for transfers to foreign nationals working at NRC-licensed facilities and granted Unescorted Access in accordance with NRC regulations; and (3) provide an affirmative list of destinations that are generally authorized to receive transfers of non-sensitive technology. The Federal Register published the final rule on February 23, 2015. The revised rule took effect as of March 25, 2015.

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<sup>1</sup> Pursuant to section 57 b.(1) of the AEA, such activities may alternatively be specifically authorized under an agreement for cooperation for peaceful uses of nuclear energy pursuant to section 123 of the AEA, or under a subsequent arrangement pursuant to section 131 of the AEA.

## **WHO SHOULD USE THIS GUIDANCE DOCUMENT**

- Anyone interested in transferring nuclear technology to a foreign person or entity.
- Anyone that has a current specific authorization to transfer nuclear technical information or assistance to a foreign national or foreign entity.
- Anyone who employs foreign nationals who require access or have access to Part 810-controlled nuclear technology.
- Anyone who is engaged in an activity that was previously generally authorized but might no longer be generally authorized.

This guidance is designed to assist in interpreting and complying with Part 810 and addresses changes to Part 810 as a result of the March 25, 2015 revisions to the rule. This document explains specific aspects of the regulation and procedures used by the National Nuclear Security Administration (NNSA) staff when administering the regulation.

Additional explanations and examples regarding the applicability of Part 810 and the Part 810 review and approval process are provided in the Part 810 FAQs and other guidance issued by DOE.

## **PURPOSE (§ 810.1)**

Part 810 implements § 57 b.(2) of the AEA by controlling the export from the United States of unclassified nuclear technology and assistance. It enables peaceful nuclear trade by identifying certain activities and destinations that are generally authorized by the Secretary, thereby requiring no further authorization under Part 810. It also controls those activities and destinations that require specific authorization by the Secretary. In addition, the regulation delineates the process for requesting a specific authorization from the Secretary and sets forth the reporting requirements for generally and specifically authorized activities subject to Part 810.

## **SCOPE (§ 810.2)**

The Part 810 regulation applies to transfers of technology or provision of assistance involving activities within the scope of the regulation conducted either in the United States or abroad by “persons” (as defined in § 810.3) subject to U.S. jurisdiction or by licensees, contractors or subsidiaries under the direction, supervision, responsibility or control of such persons.

The Scope of Part 810 has been substantially revised to clarify the types of activities that are covered by the rule.

Part 810 applies, but is not limited, to transfers of “technology” (defined in § 810.3 to include “technical data” or “assistance,” such as consulting, training, transferring nuclear technology, or the use of computer codes) involving the following activities:

- Chemical conversion and purification of uranium, thorium, plutonium, and neptunium;
- Nuclear fuel fabrication, including preparation of fuel elements, fuel assemblies and cladding thereof;
- 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;

- “Development,” “production” or “use” (as those terms are defined in § 810.3) of nuclear reactors, 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 (i.e. the so-called “nuclear steam supply system” or NSSS”); but not the Balance of Plant (BOP) which are part of all commercial power plants; nuclear, oil, gas, or coal;
- Development, production or use of accelerator-driven subcritical assembly systems that are especially designed or intended for plutonium or uranium-233 production;
- Hydrogen isotope separation and heavy water production;
- Reprocessing of irradiated nuclear fuel or targets containing “special nuclear material” (SNM) (defined in § 810.3 to mean plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235); and
- 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. The scope of technology covered by Part 810 is based on NRC regulations at 10 CFR Part 110, Appendices A through K, and O, which lists items considered to be especially designed or prepared for certain listed nuclear activities.

Part 810 does not apply to the following activities:

- Exports licensed by NRC, DOS, or DOC;
- Transfer of “publicly available information”, “publicly available technology”, or the results of “fundamental research” (as those terms are defined in § 810.3);
- Uranium and thorium mining and milling;
- Nuclear fusion reactors;
- Production or extraction of radiopharmaceutical isotopes when the process does not involve SNM; and
- Transfer, within the United States, of technology to any individual who is, lawfully admitted for permanent residence in the United States or is a protected individual under section 274B(a)(3) of the Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3)) (including U.S. citizens).

### *AGENCY JURISDICTIONS*

Part 810 does not apply to exports licensed by DOC, DOS, or NRC. In some cases, an export license from one of these agencies may include a license to provide certain technology ancillary to the component or material being exported.

### *DE MINIMIS THRESHOLDS*

Any technology that falls within the scope of Part 810 is controlled under Part 810 and is not subject to a specific percentage threshold before the controls are applied. A mechanistic approach is not appropriate for Part 810 coverage determinations for authorization of activities such as cooperative enrichment enterprises and other technology transfers by collaborative enterprises. DOE will make coverage determinations based on the specific facts of the proposed activity, including but not limited to technology to be transferred, the significance of the technology to the production of

special nuclear material, end user destination, and end use duration of the activity such as single transfer or an ongoing activity, rather than by a mechanistic rule because the facts of each case are unique and not readily susceptible to characterization under a *de minimis* threshold.

### **DEFINITIONS (§ 810.3)**

The following are some of the key definitions included in Part 810. Examples provided with these definitions are illustrative only and are not exhaustive.

**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 section 274B(a)(3) of the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Accordingly, the definition excludes permanent resident aliens (“Green Card” holders) and other protected individuals under the Immigration and Naturalization Act, principally those persons to whom the U.S. Government has granted asylum or refugee status. An individual who is a dual citizen of the United States and another country is not a foreign national. For foreign nationals who have dual or multiple foreign citizenships, DOE addresses nationality on a case-by-case basis, considering all countries in which an individual holds citizenship.

**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 for industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

*Examples:*

- University research under a government grant, the results of which are planned to be published as a series of papers and as public theses by participating graduate students. This work is fundamental research exempt from Part 810 coverage under § 810.2(c)(2).
- University research under an agreement with a corporation, the results of which the university will be allowed to publish in papers and as public theses. This work is fundamental research exempt from Part 810 coverage under § 810.2(c)(2).
- University research under an agreement with a corporation, the results of which the university will not be allowed to publish until after the corporation has reviewed the results and redacted information it desires to hold as a trade secret. This work is not fundamental research and accordingly is subject to Part 810.

**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, the process of transforming design data into a product, configuration design, integration design, and layouts.

**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.

*Examples:*

- Assistance with resolving a real-time radiological emergency in an operating foreign reactor.
- Performing probabilistic risk assessments (PRAs) for operating foreign nuclear reactors.

**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.

*Examples of persons:*

- John Q. Smith, a U.S. citizen.
- XYZ corporation, a privately owned company incorporated in Delaware, that employs a number of U.S. citizens and/or foreign nationals (as defined in § 810.3).
- A wholly-owned subsidiary of a U.S. corporation incorporated in a foreign country.

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

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

*Examples:*

- Information given freely in marketing brochures, proposals, published in magazines, books and presentations given in an open forum is considered publicly available information.
- Information that is only available directly from the seller and cannot be shared without permission is not publicly available information.
- The transfer of financial information by itself—as opposed to technical information that may be embedded in some financial information—is not controlled under Part 810.
- While a seller’s project proposal or statement of work may not contain technical information making it subject to Part 810, the project agreement may, if executed, subsequently call for transfers of technical information subject to Part 810.

A party considering the transfer of technical information and uncertain whether is exempt as publicly available information may request technical assistance or a formal interpretation of the applicability of Part 810 to the transfer pursuant to § 810.5 of the rule.

**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.

*Example:*

An academic paper regarding nuclear power reactor operation prior to actual publication is exempt from Part 810 coverage under § 810.2(c)(2) as long as the information has been appropriately authorized for public release and there is clear intent to publish all results.

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

**Use** means operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing. Note that engagement in any one of the activities listed in the definition constitutes “use”. Engagement in all of the listed activities is not necessary in order for the definition to apply.

*Example:*

Technology for “use” of nuclear equipment or components includes operating manuals; operating or installation instructions as to how to use, install, repair or maintain a nuclear reactor component or part thereof; or information or training as to how to perform a nuclear service or consulting work on a nuclear power reactor, or components thereof.

## **POINT OF CONTACT (§ 810.4)**

Applications, questions, or requests should be addressed to: U.S. Department of Energy, Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and Arms Control (NA-24), Washington, DC 20585, Telephone (202) 586-1007

Communications also may be delivered to DOE’s headquarters at 1000 Independence Avenue, SW, Washington, DC 20585. Correspondence clearly marked as containing proprietary information will, as required by AEA Sec. 57.b. be given the maximum degree of protection allowable by law.

Correspondence may be submitted electronically via email to [Part810@mnsa.doe.gov](mailto:Part810@mnsa.doe.gov).

Notifications of “fast track” activities described in §§ 810.6(c)(1) and (c)(2) should be sent to: [Part810-OperationalSafety@mnsa.doe.gov](mailto:Part810-OperationalSafety@mnsa.doe.gov).

Notifications regarding activity in the Ukraine should be delivered by email to: [Part810-Ukraine@mnsa.doe.gov](mailto:Part810-Ukraine@mnsa.doe.gov).



## **INTERPRETATIONS (§ 810.5)**

Persons may request technical assistance (sometimes called an RFD) from the NNSA Office of Nonproliferation and Arms Control on whether a proposed activity falls within the scope of Part 810, 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 Part 810 regulations other than a written interpretation by DOE's General Counsel is binding upon DOE.

A response to a request for technical assistance or a formal written interpretation under § 810.5 normally will be made within 30 calendar days. If additional time is needed for a response, DOE will provide an interim response explaining the reason for the delay.

The NNSA Office of Nonproliferation and Arms Control may periodically publish redacted versions of requests for determination or specific authorizations that may be of general interest, excluding applicants' proprietary data and other information protected by law from public disclosure.

## **GENERAL AUTHORIZATION (§ 810.6)**

The Secretary has generally authorized transfers of unclassified nuclear technology or assistance to destinations included on, or foreign nationals of, the "generally authorized destinations" listed in Appendix A to Part 810. As noted in Appendix A, generally authorized transfers to Chile and Mexico are for specified projects only.

Therefore, if the proposed activity involves the transfer of technical data or assistance relating to the nuclear activities listed in § 810.2(b) as described above and the destination is listed in Appendix A (as limited for Chile and Mexico), then the proposed export to that destination is generally authorized, subject to the limitations and reporting requirements specified in §§ 810.7, 810.8 and 810.12.

Note that transfers of technologies subject to § 810.7(b) and (c) (e.g. sensitive nuclear technology, enrichment, reprocessing and heavy water production technologies, etc.) are not generally authorized regardless of the destination.

The applicability of a general authorization under § 810.6 to a retransfer depends on where the relevant activities would actually take place and which entities are involved. For example, if a U.S. exporter receives a request from Company X located in Canada to transfer technology for a CANDU reactor, the U.S. exporter will need to ascertain if the end user is a Canadian CANDU civilian nuclear power plant or if the end user's reactor would be in a third country. If the final end user is in a third country that is not a generally authorized destination under Appendix A to Part 810, then the U.S. exporter must obtain a specific authorization before the transfer to the final end user can take place. DOE evaluates such transfers as if the U.S. exporter were transferring the technology directly to the final end user in the third country/retransfer destination.

Further, the U.S. exporter must have an agreement with the recipient ensuring that any subsequent transfer of Part 810-controlled technology will take place only if the U.S. exporter obtains DOE's prior written consent.

Note that the transfer of controlled nuclear technology to a "foreign national" (as defined in §810.3), whether within or outside of the United States, is deemed to be an export of such technology to that foreign national's country of citizenship. As a result, whether such a transfer is generally authorized or requires specific authorization will depend on the nature and purpose of the transfer as well as the general authorization status of the recipient's country of citizenship under Appendix A to Part 810.

The March 25, 2015 revisions to Part 810 included a new general authorization provision at §810.6 (b) that generally authorizes transfers of Part 810-controlled technology to a foreign national of a country not listed in Appendix A if: 1) the foreign national is lawfully employed or contracted to work for a U.S. employer in the United States; 2) the foreign national has executed 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 U.S. employer authorizing access to the technology complies with the reporting requirements in § 810.12(g). All four criteria must be met in order for this general authorization to apply.

The March 25, 2015 revisions to Part 810 redefined the term "operational safety" to broaden the scope of assistance and technology that is generally authorized under § 810.6(c). U.S. companies are generally authorized to provide operational safety information and assistance to existing safeguarded nuclear reactors in foreign countries so they can meet specific national or international safety standards or requirements for operational safety. In addition, furnishing operational safety information and assistance in the context of important benchmarking activities at plants in the United States by international entities or individuals, such as those conducted by the Institute of Nuclear Power Operations, World Association of Nuclear Operators and NRC-sponsored and -approved activities, is generally authorized. These types of general authorization under § 810.6(c) require advance notification to and approval by DOE. For activities under (1), (c)(2), and (c)(3) "Fast Track" activities, an e-mail should be sent to [Part810-OperationalSafety@nnsa.doe.gov](mailto:Part810-OperationalSafety@nnsa.doe.gov). For § 810.6 (c)(3) operational assistance activities for facilities in the United states, the request must also be sent by certified mail return receipt requested.

Other generally authorized activities include § 810.6(d) exchange programs approved by the DOS in consultation with DOE. Sections 810.6(e) and (f) 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 DOS or DOE. Finally, a new provision at § 810.6(g) authorizes the transfer of technology for the extraction of Molybdenum-99 for medical use from irradiated nuclear material, subject to certain conditions.

All generally authorized activities are subject to the limitations specified in §§ 810.7 and 810.8 and the reporting requirements specified in § 810.12.

## **SPECIFIC AUTHORIZATION (§ 810.7)**

A specific authorization is an authorization granted by the Secretary in response to a request by a person to engage in activities within the scope of Part 810 for which a general authorization under § 810.6 does not apply. As described in § 810.7, activities requiring specific authorization include transfers of controlled nuclear technology that are not generally authorized under §810.6, as well as transfers of sensitive nuclear technology or assistance to such activities in any form. Filing a request for specific authorization does not itself permit the proposed activity to take place; the activity cannot take place until the applicant receives a specific authorization from DOE.

**Please note:** If for any reason a person believes their activities are covered under another person's specific authorization, it is the person's responsibility to verify applicability of the other person's specific authorization before beginning any activity which requires a specific authorization. If in doubt, the NNSA Office of Nonproliferation and Arms Control should be contacted for verification of such coverage by another person's specific authorization before initiating any transfer under such authorization.

How the specific authorization approval process works:

The applicant prepares the specific authorization application letter providing the information specified in §810.11. Submit the application, which can be in the form of a letter, to the NNSA contact office as specified in § 810.4 for review and processing.

NNSA logs in the application letter as received and assigns it to an Export Control Action Officer ("Action Officer") for processing and analysis. The Action Officer reviews the information and docket the application once he or she concludes sufficient information is provided to move the case forward. The Action Officer then obtains an independent DOE laboratory technical review of the proposed transfer; prepares a technical analysis recommending approval or denial; and obtains DOE/NNSA internal legal and policy approval of the preliminary analysis.

Once the preliminary technical analysis is internally approved, the Action Officer prepares and transmits the relevant information, together with DOE's recommendation, to DOC, DoD, NRC for consultation and to DOS for concurrence on the proposed transfer activity. The interagency should respond to DOE's request within 30 days. As part of its review and concurrence, DOS obtains written nuclear nonproliferation assurances from the government(s) of the foreign country(ies) involved in the proposed transfer activity, unless the proposed transfer is a deemed export in which case no foreign government assurances are required. . The request for assurances is transmitted by the U.S. embassy in the foreign country to the governmental entity (e.g., Ministry of Foreign Affairs, or nuclear regulatory authority) with responsibility over nuclear imports. Although these requests are transmitted on a timely basis by the U.S. embassy, the timeline for receiving a written response from the foreign government is outside of the control of the U.S. Government and unpredictable.

Once all of the necessary interagency approvals and foreign government assurances are received, the Action Officer prepares the final package for approval by DOE/NNSA staff and the Secretary of Energy.

Once signed, the written specific authorization is transmitted to the applicant with a cover letter explaining the terms and any conditions imposed upon the specific authorization.

## **RESTRICTIONS ON GENERAL AND SPECIFIC AUTHORIZATION (§ 810.8)**

A general or specific Part 810 authorization:

- Is limited to activities involving only unclassified information and does not permit furnishing classified information;
- Does not relieve a person from complying with the relevant laws, or the regulations of other U.S. Government agencies; and
- 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.

## **GRANT OF SPECIFIC AUTHORIZATION (§ 810.9)**

An application for authorization to engage in activities for which specific authorization is required under § 810.7 should be submitted to the NNSA Office of Nonproliferation and Arms Control.

The Secretary, with the concurrence of DOS and after consulting with DoD, DOC, and NRC, will approve an application for specific authorization if the Secretary determines that the proposed activity will not be inimical to the interest of the United States.

Each application for specific authorization is assessed on its own merits, in light of all the known facts and circumstances, to determine whether it would be inimical to the interest of the United States. Therefore, the Secretary grants specific authorizations on a case-by-case basis. Some of the factors to be considered in deciding whether to grant a specific authorization are listed in § 810.9(b) and include: whether the United States has an agreement for cooperation in force covering exports to the country or entity involved (i.e., a 123 Agreement), whether the country has accepted IAEA safeguards obligations on all nuclear materials used for peaceful purposes and has them in force, and the significance of the assistance or transferred technology relative to the existing nuclear capabilities of the recipient country. The applicant is not required to address, in its application, the DOE review criteria specified in § 810.9(b), but may do so in support of its application.

If the proposed activity involves the export of sensitive nuclear technology, the requirements of §§ 127 and 128 of the AEA and of any applicable U.S. international commitments also must be met. In addition to the factors specified in § 810.9(b), the Secretary, in considering such a proposed activity, also will take into account such factors as whether the recipient country has signed, ratified, and is implementing a comprehensive safeguards agreement with the IAEA and has in force an Additional Protocol thereto, has a history of complying with IAEA safeguards obligations, and whether it is adhering to the Nuclear Suppliers Group Guidelines and international nuclear safety conventions.

Unless otherwise prohibited by U.S. law, the Secretary may specifically authorize activities related to the enrichment of source material and special nuclear material, provided that certain conditions are met, including receipt by the U.S. Government of written nonproliferation assurances from the government of the relevant country and the existence of appropriate security arrangements to protect the activity from use or transfer inconsistent with the country's national laws.

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 requestor at DOE's Public Reading Room, exclusive of any proprietary data which the applicant substantiates will cause substantial harm to its competitive position if publicly disclosed and any other information applicant claims protected by law from public disclosure.

## **SUSPENSION, OR MODIFICATION OF AUTHORIZATION (§810.10)**

This section remains materially unchanged from § 810.11 of the 1986 version of the rule.

## **APPLYING FOR A SPECIFIC AUTHORIZATION (§ 810.11)**

The content of an application for specific authorization remains largely unchanged from the 1986 version of the rule. In order to ensure efficient processing and review of an application for specific authorization, the application letter must include the following information, as set forth in § 810.11(a):

- 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(s) (including time frames and expected retransfers) to which the activity relates as specified in §§ 810.9(b)(7), (8), and (9); and
- 4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

For deemed exports and other employment of foreign nationals not eligible for general authorization under § 810.6(b), § 810.11(b) requires the applicant to provide:

- 1) A description of the technology that would be made available to the foreign national;
- 2) The purpose of the proposed transfer, a description of the applicant's technology control program, and any Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;

- 3) A copy of any confidentiality agreement to safeguard the technology from unauthorized use or disclosure between the applicant and the foreign national;
- 4) Background information about the foreign national, including the individual's citizenship, all countries where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part, and any current immigration or visa status in the United States; and
- 5) A statement signed by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.

In addressing the above requirements, the application letters should provide detailed information concerning the following elements:

- 1) The reason to transfer to, train or assist a foreign company or individual. For example:
  - A joint venture, signed contract, work order, or possible business opportunity for which specific authorization is required before such transfer or assistance can take place.
  - A foreign national to whom a company wants to grant access to nuclear technology in order to increase his/her job responsibilities or position

DOE needs to know the reasons for this transfer or assistance to a foreign individual or entity in order to issue the correct specific authorization and obtain the required foreign government documentation (assurances for technology transferred) or the required business documentation (foreign employee signed individual nonproliferation assurances and non-disclosure agreement) for the employee.
- 2) The estimate of the value of the technology or assistance proposed for transfer as required by § 810.11(a)(3) should be a best estimate of this value; it could be a contract amount or an estimate of the value of the work over the entire time frame that the proposed activity will occur, whether it is a one-time deliverable or a multi-year transfer activity.

## **REPORTS (§ 810.12)**

All reports should be sent to: U.S. Department of Energy, Attention: Senior Policy Advisor, National Nuclear Security Administration/Office of Nonproliferation and Arms Control (NA-24) 1000 Independence Ave SW, Washington, DC 20585, Telephone (202) 586-1007 or e-mailed to Part810@nnsa.doe.gov.

### *REPORTING FOR SPECIFIC AUTHORIZATION ACTIVITY*

Within 30 calendar days after beginning the authorized activity (as well as any additional reporting frequency specified in the authorization), any person who has received a specific authorization must provide a report to NNSA containing the following information:

- The name, address and citizenship of the person submitting the report;
- The name, address and citizenship of the person for whom or which the activity is being performed;
- A description of the activity, the date it began, its location, status and anticipated date of completion; and

- A copy of the DOE letter authorizing the activity.

Any person carrying out a specifically authorized activity must inform DOE, in writing within 30 calendar days, of completion of the activity or of its termination before completion, in order to formally close out the authorization. In addition, any person granted a specific authorization must 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.

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 activity or country for which specific authorization is required.

### *REPORTING FOR GENERALLY AUTHORIZED ACTIVITY*

Each person, within 30 calendar days after beginning any generally authorized activity under §§ 810.6 (a), (d), (e), (f) or (g), must provide to DOE:

- The name, address and citizenship of the person submitting the report;
- The name, address and citizenship of the person for whom or which the activity is being performed;
- A description of the activity, the date it began, its location, status, and anticipated date of completion; and,
- 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.

Individuals engaging in generally authorized activities as employees of persons required to report under § 810.12 are not themselves required to submit the reports described above.

Persons engaging in generally authorized activities under § 810.6(b) are required to notify DOE that a citizen of a country not listed in Appendix A to Part 810 has been granted access to information in accordance with NRC access requirements. The report should contain the information required in § 810.11(b).

### **ADDITIONAL INFORMATION (§ 810.13)**

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

### **SPECIAL PROVISIONS FOR UKRAINE (§ 810.14)**

Ukraine has been designated a generally authorized destination under the revised Part 810 rule; but in light of the geopolitical situation in Ukraine, DOE has included advance notification and reporting requirements with respect to generally authorized activities involving Ukraine. Transfers of nuclear technology and assistance to areas that are not under control of the Government of Ukraine could

present a proliferation risk, and a case-by-case non-inimicality determination is needed for transfers to those areas.

#### *PRE-ACTIVITY NOTIFICATION REQUIREMENTS*

Any person beginning any generally authorized activity involving Ukraine must submit to DOE at least ten days prior to beginning that activity a report containing the following information:

- The name, address, and citizenship of the person submitting the report;
- The name, address, and citizenship of the person for which the activity is to be performed;
- A description of the activity, the date it is proposed to begin, its location, status, and anticipated date of completion; and
- A written assurance that the person that is to perform the activity has an agreement with the recipient that any subsequent transfer of technology or information transferred under general authorization will not be transferred to a country that is not listed in the Appendix to Part 810 without the prior written approval of DOE.

Pre-activity notification regarding activity in Ukraine should be delivered by e-mail to [Part810-Ukraine@nnsa.doe.gov](mailto:Part810-Ukraine@nnsa.doe.gov). These pre-notification requirements do not apply to deemed exports within the United States to Ukrainian nationals

#### *POST-ACTIVITY REPORTING REQUIREMENTS*

Every person completing a generally authorized activity in Ukraine must submit to DOE within ten days following the original transfer of material, equipment or technology written confirmation that such transfer was completed in accordance with the description of the activity provided as required by the pre-activity report provided under § 810.14(a).

Post-activity reporting should be delivered by e-mail to [Part810@nnsa.doe.gov](mailto:Part810@nnsa.doe.gov).

### **VIOLATIONS (§ 810.15)**

For violations of the Part 810 regulation, the AEA provides that:

- (1) In accordance with section 232 of the AEA, permanent or temporary injunctions, restraining or other orders may be granted to prevent any person from violating any provision of the AEA or any regulation or other order issued thereunder.
- (2) In accordance with section 222 of the AEA, whoever willfully violates, attempts to violate, or conspires to violate any provision of section 57 of the AEA may be fined up to \$10,000 or imprisoned up to 10 years, or both. If the offense is committed with intent to injure the United States or to aid any foreign nation, the penalty could be up to life imprisonment or a \$20,000 fine, or both.

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



Persons who have identified a violation of Part 810 should report the violation to the DOE promptly after determining that the violation occurred.

**EFFECTIVE DATE AND SAVINGS CLAUSE (§ 810.16)**

The revised Part 810 regulation is effective as of March 25, 2015.