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PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

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

Source: 51 FR 44574, Dec. 10, 1986, unless otherwise noted.

§ 810.1 Purpose.

These regulations implement section 57b of the Atomic Energy Act which empowers the Secretary of Energy to authorize U.S. persons to engage directly or indirectly in the production of special nuclear material outside the United States. Their purpose is to:

(a) Indicate activities which have been generally authorized by the Secretary of Energy and thus require no further authorization;

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

(c) Explain reporting requirements for various activities.

§ 810.2 Scope.

10 CFR part 810:

(a) Applies to all persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States.

(b) Applies to activities conducted either in the United States or abroad by such persons or by licensees, contractors or subsidiaries under their direction, supervision, responsibility or control.

(c) Applies, but is not limited to, activities involving nuclear reactors and other nuclear fuel cycle facilities for the following: fluoride or nitrate conversion; isotope separation (enrichment); the chemical, physical or metallurgical processing, fabricating, or alloying of special nuclear material; production of heavy water, zirconium (hafnium-free or low-hafnium), nuclear-grade graphite, or reactor-grade beryllium; production of reactor-grade uranium dioxide from yellowcake; and certain uranium milling activities.

(d) Does not apply to exports licensed by the Nuclear Regulatory Commission.

§ 810.3 Definitions.

As used in part 810:

Accelerator-driven subcritical assembly system is a system comprising a “subcritical assembly” and a “production accelerator” and which is designed or used for the purpose of producing or processing special nuclear material (SNM) or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM. In such a system, the “production accelerator” provides a source of neutrons used to effect SNM production in the “subcritical assembly.”

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 12356 or any superseding order, or Restricted Data classified under the Atomic Energy Act.

General authorization means an authorization granted by the Secretary of Energy under section 57b(2) of the Atomic Energy Act to provide certain assistance to foreign atomic energy activities and which is effective without a specific request to the Secretary or the issuance of an authorization to a particular person.

IAEA means the International Atomic Energy Agency.

Non-nuclear-weapon state is a country not recognized as a nuclear-weapon state by the NPT (i.e., states other than the United States, Russia, the United Kingdom, France, and China).

NNPA means the Nuclear Non-Proliferation Act of 1978.

NPT means the Treaty on the Non-Proliferation of Nuclear Weapons.

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

Open meeting means a conference, seminar, trade show or other gathering that all technically qualified members of the public may attend and at which they may make written or other personal record of the proceedings, notwithstanding that (1) a reasonable registration fee may be charged, or (2) a reasonable numerical limit exists on actual attendance.

Operational safety means the capability of a reactor to be operated in a manner that prevents uncontrolled or inadvertent criticality, prevents or mitigates uncontrolled release of radioactivity to the environment, monitors and limits staff exposure to radiation and radioactivity, and protects 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 such a manner.

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or

private institution, group, Government agency other than the Department of Energy, any State or political entity within a State; and (2) any legal successor, representative, agent or agency of the foregoing. Persons under U.S. jurisdiction are responsible for their foreign licensees, contractors or subsidiaries to the extent that the former have control over the activities of the latter.

Production accelerator is a particle accelerator designed and/or intended to be used, with a subcritical assembly, for the production or processing of SNM or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM.

Production reactor means a nuclear reactor specially designed or used primarily for the production of plutonium or uranium-233.

Public information means: (1) Information available in periodicals, books or other print or electronic media for distribution to any member of the public, or to a community of persons such as those in a scientific, engineering, or educational discipline or in a particular commercial activity who are interested in a subject matter; (2) Information available in public libraries, public reading rooms, public document rooms, public archives, or public data banks, or in university courses; (3) Information that has been presented at an open meeting (see definition of "open meeting"); (4) Information that has been made available internationally without restriction on its further dissemination; or (5) Information contained in an application which has been filed with the U.S. Patent Office and eligible for foreign filing under 35 U.S.C. 184 or which has been made available under 5 U.S.C. 552, the Freedom of Information Act. Public information must be available to the public prior to or at the same time as it is transmitted to a foreign recipient. It does not include any technical embellishment, enhancement, explanation or interpretation which in itself is not public information, or information subject to sections 147 and 148 of the Atomic Energy Act.

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.

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 "public information"] which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water, but shall not include Restricted Data controlled pursuant to Chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services.

Source Material means: (1) Uranium or thorium, other than special nuclear material or (2) ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

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 of Energy under section 57b(2) of the Atomic Energy Act to a person to provide specified assistance to a foreign atomic energy activity in response to an application filed under 10 CFR part 810.

Subcritical assembly is an apparatus containing source material or SNM designed or used to produce a nuclear fission chain reaction that is not self-sustaining.

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

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39638, July 26, 1993; 65 FR 16126, Mar. 27, 2000]

§ 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: Director, Nuclear Transfer and Supplier Policy Division, NN-43, Office of Arms Control and Nonproliferation. Telephone: (202) 586-2331.

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

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39638, July 26, 1993; 65 FR 16127, Mar. 27, 2000]

§ 810.5 Interpretations.

A person may request the advice of the Director, Nuclear Transfer and Supplier Policy Division (NN-43), on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.7, or requires specific authorization under § 810.8; however, unless authorized by the Secretary of Energy, in writing, no interpretation of the regulations in this part other than a written interpretation by the General Counsel is binding upon the Department. When advice is requested from the Director, Nuclear Transfer and Supplier Policy Division, or a binding, written determination is requested from the General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the delay.

[65 FR 16127, Mar. 27, 2000]

§ 810.6 Authorization requirement.

Section 57b of the Atomic Energy Act in pertinent part provides that:

IT SHALL BE UNLAWFUL FOR ANY PERSON TO DIRECTLY OR INDIRECTLY ENGAGE IN THE PRODUCTION OF ANY SPECIAL NUCLEAR MATERIAL OUTSIDE OF THE UNITED STATES EXCEPT (1) AS SPECIFICALLY AUTHORIZED UNDER AN AGREEMENT FOR COOPERATION MADE PURSUANT TO SECTION 123, INCLUDING A SPECIFIC AUTHORIZATION IN A SUBSEQUENT ARRANGEMENT UNDER SECTION 131 OF THIS ACT, OR (2) UPON AUTHORIZATION BY THE SECRETARY OF ENERGY AFTER A DETERMINATION THAT SUCH ACTIVITY WILL NOT BE INIMICAL TO THE INTEREST OF THE UNITED STATES: *PROVIDED*, THAT ANY SUCH DETERMINATION BY THE SECRETARY OF ENERGY SHALL BE MADE ONLY WITH THE CONCURRENCE OF THE DEPARTMENT OF STATE AND AFTER CONSULTATION WITH THE ARMS CONTROL AND DISARMAMENT AGENCY, THE NUCLEAR REGULATORY COMMISSION, THE DEPARTMENT OF COMMERCE, AND THE DEPARTMENT OF DEFENSE.

§ 810.7 Generally authorized activities.

In accordance with section 57b(2) of the Atomic Energy Act, the Secretary of Energy has determined that the following activities are generally authorized, provided no sensitive nuclear technology is transferred:

- (a) Furnishing public information as defined in § 810.3;
- (b) Furnishing information or assistance to prevent or correct a current or imminent radiological emergency posing a significant danger to the health and safety of the off-site population, provided the Department of Energy is notified in advance and does not object;
- (c) Furnishing information or assistance, including through continuing programs, to enhance the operational safety of an existing civilian nuclear power plant in a country listed in § 810.8(a) or to prevent, reduce, or correct a danger to the health and safety of the off-site population posed by a civilian nuclear power plant in such a country; provided the Department of Energy is notified in advance by certified mail, return receipt requested, and approves the use of the authorization in writing; the Department will notify the applicant of the status of the request within 30 days from the date of receipt of the notification.
- (d) Implementing the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States;

(e) Participation in exchange programs approved by the Department of State in consultation with the Department of Energy;

(f) Participation approved by a U.S. Government agency in IAEA programs, and activities of IAEA employees whose employment was approved by the U.S. Government;

(g) Participation in open meetings as defined in § 810.3 that are sponsored by educational, scientific, or technical organizations or institutions;

(h) Otherwise engaging directly or indirectly in the production of SNM outside the United States in ways that:

(1) Do not involve any of the countries listed in § 810.8(a); and

(2) Do not involve production reactors, accelerator-driven subcritical assembly systems, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, production of heavy water, or research reactors, or test reactors, as described in § 810.8 (c)(1) through (6).

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39639, July 26, 1993; 65 FR 16127, Mar. 27, 2000]

§ 810.8 Activities requiring specific authorization.

Unless generally authorized by § 810.7, a person requires specific authorization by the Secretary of Energy before:

(a) Engaging directly or indirectly in the production of special nuclear material in any of the following countries. Countries marked with an asterisk (*) are non-nuclear-weapon states that do not have full-scope IAEA safeguards agreements in force.

AFGHANISTAN

ALBANIA

ALGERIA

ANDORRA*

ANGOLA*

ARMENIA

AZERBAIJAN*

BAHRAIN*

BELARUS

BENIN*

BOTSWANA*

BURKINA FASO*

BURMA (MYANMAR)

BURUNDI*

CAMBODIA*

CAMEROON*

CAPE VERDE*

CENTRAL AFRICAN REPUBLIC*

CHAD*

CHINA, PEOPLE'S REPUBLIC OF

COMOROS*
CONGO* (ZAIRE)
CUBA*
DJIBOUTI*
EQUATORIAL GUINEA*
ERITREA*
GABON*
GEORGIA*
GUINEA*
GUINEA-BISSAU*
HAITI*
INDIA*
IRAN
IRAQ*
ISRAEL*
KAZAKHSTAN
KENYA*
KOREA, PEOPLES DEMOCRATIC REPUBLIC OF*
KUWAIT*
KYRGYZSTAN*
LAOS*
LIBERIA*
LIBYA
MACEDONIA
MALI*
MARSHALL ISLANDS*
MAURITANIA*
MICRONESIA*
MOLDOVA*
MONGOLIA
MOZAMBIQUE*
NIGER*
OMAN*
PAKISTAN*
PALAU*
QATAR*
RUSSIA
RWANDA*

SAO TOME AND PRINCIPE*
SAUDI ARABIA*
SEYCHELLES*
SIERRA LEONE*
SOMALIA*
SUDAN
SYRIA
TAJIKISTAN*
TANZANIA*
TOGO*
TURKMENISTAN*
UGANDA*
UKRAINE
UNITED ARAB EMIRATES*
UZBEKISTAN
VANUATU*
VIETNAM
YEMEN*
YUGOSLAVIA

(b) Providing sensitive nuclear technology for an activity in any foreign country.

(c) Engaging in or providing assistance or training in any of the following activities with respect to any foreign country.

(1) Designing production reactors, accelerator-driven subcritical assembly systems, or facilities for the separation of isotopes of source or SNM (enrichment), chemical processing of irradiated SNM (reprocessing), fabrication of nuclear fuel containing plutonium, or the production of heavy water;

(2) Constructing, fabricating, operating, or maintaining such reactors, accelerator-driven subcritical assembly systems, or facilities;

(3) Designing, constructing, fabricating, operating or maintaining components especially designed, modified or adapted for use in such reactors, accelerator-driven subcritical assembly systems, or facilities;

(4) Designing, constructing, fabricating, operating or maintaining major critical components for use in such reactors, accelerator-driven subcritical assembly systems, or production-scale facilities; or

(5) Designing, constructing, fabricating, operating, or maintaining research reactors, test reactors or subcritical assemblies capable of continuous operation above five megawatts thermal.

(6) Training in the activities of paragraphs (c)(1) through (5) of this section.

[65 FR 16127, Mar. 27, 2000; 65 FR 26278, May 5, 2000]

§ 810.9 Restrictions on general and specific authorization.

A general or specific authorization granted by the Secretary of Energy under these regulations:

(a) Is limited to activities involving only unclassified information and does not permit furnishing

Restricted Data or other classified information.

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

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

§ 810.10 Grant of specific authorization.

(a) Any person proposing to provide assistance for which § 810.8 indicates specific authorization is required may apply for the authorization to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN-43, Office of Arms Control and Nonproliferation.

(b) The Secretary of Energy will approve an application for specific authorization if he determines, with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense, that the activity will not be inimical to the interest of the United States. In making this determination, the Secretary will take into account:

(1) Whether the United States has an agreement for nuclear cooperation with the nation or group of nations involved;

(2) Whether the country involved is a party to the NPT, or a country for which the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) is in force;

(3) Whether the country involved has entered into an agreement with the IAEA for the application of safeguards on all its peaceful nuclear activities;

(4) Whether the country involved, if it has not entered into such an agreement, has agreed to accept IAEA safeguards when applicable to the proposed activity;

(5) Other nonproliferation controls or conditions applicable to the proposed activity;

(6) The relative significance of the proposed activity;

(7) The availability of comparable assistance from other sources;

(8) Any other factors that may bear upon the political, economic, or security interests of the United States, including U.S. obligations under international agreements or treaties.

(c) If the proposed assistance involves the export of "sensitive nuclear technology" as defined in § 810.3, the requirements of sections 127 and 128 of the Atomic Energy Act and of any applicable U.S. international commitments must also be met.

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

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39639, July 26, 1993; 65 FR 16128, Mar. 27, 2000]

§ 810.11 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 § 810.13;

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

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

§ 810.12 Information required in an application for specific authorization.

Each application shall contain:

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

(b) A complete description of the proposed activity, including its approximate monetary value, the name and location of any facility or project involved, the name and address of the person or legal entity for which the activity is to be performed, and a detailed description of any specific project to which the activity relates;

(c) Any information the applicant may wish to provide concerning the factors listed in § 810.10(b); and

(d) Designation of any information considered proprietary whose public disclosure would cause substantial harm to the competitive position of the applicant.

§ 810.13 Reports.

(a) Any person who has received a specific authorization shall within 30 days after beginning the authorized activity provide to the Department of Energy a 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 or entity for 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 Department of Energy's letter authorizing the activity.

(b) Any person carrying out a specifically authorized activity shall inform DOE when the activity is completed or if it is terminated before completion.

(c) Any person granted a specific authorization shall inform DOE when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.

(d) Any person, within 30 days after beginning any generally authorized activity under § 810.7(b), (c), or (h), shall provide to the Department of Energy:

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

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

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

(4) An assurance that the U.S. vendor has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization to a country listed in § 810.8(a) will only take place if the vendor obtains DOE approval.

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

(f) Persons engaging in activities generally authorized under § 810.7(a), (d), (e), (f), and (g) are not subject to reporting requirements under this section.

(g) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN-43, Office of Arms Control and Nonproliferation.

[51 FR 44574, Dec. 10, 1986, as amended at 58 FR 39639, July 16, 1993; 65 FR 16128, Mar. 27, 2000]

§ 810.14 Additional information.

The Department of Energy may at any time require a person engaging in any generally or specifically authorized activity to submit additional information.

§ 810.15 Violations.

(a) The Atomic Energy Act provides that:

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

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

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

§ 810.16 Effective date and savings clause.

Except for actions that may be taken by DOE pursuant to § 810.11, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before April 26, 2000 (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 2000) 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 April 26, 2000, but that require specific authorization under the regulations in this part, must request specific authorization by July 25, 2000 but may continue their activities until DOE acts on the request.

[65 FR 16128, Mar. 27, 2000]