

U. S. Department of Energy
Supporting Statement
Assistance to Foreign Atomic Energy Activities
OMB Control Number 1901-0263

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of the reinstatement of the previously approved information collection, Assistance to Foreign Atomic Energy Activities. The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, "Instructions for Completing OMB Form 83-I."

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

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) enacted by P.L. 95-242 empowers the Secretary of Energy (Secretary) to authorize persons to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States.

Section 57 b. of the AEA makes it unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123 of the Act, including a specific authorization in a subsequent arrangement under section 131 of the 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. 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 Nuclear Regulatory Commission, the Department of Commerce and the Department of Defense.

In order to implement Section 57b.(2), DOE promulgated a rule found at 10 CFR Part 810. This rule describes what activities are within the scope of control, what activities are generally authorized by the Secretary and what activities require a specific authorization. The rule also provides the information requirements for reporting generally authorized activities and applications for specific authorization.

This collection of information is necessary in order to provide the Secretary of Energy with the appropriate information needed to make an informed determination regarding a request to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection

The purpose of this collection of information is to inform the Secretary about U.S. industry's activities regarding foreign nuclear power programs. Information is used to formulate recommendations to the Secretary about which activities require specific authorization to certain countries or for sensitive nuclear technologies that are subject to regulatory control to all countries. The regulation requires the submission of specific information essential for the Secretary to make a non-inimicality finding about the transfer of U.S. nuclear technology, assistance or expertise. This information is submitted in writing and on company letterhead addressing all the points in 10 CFR Part 810.12 and 810.13, as applicable. Information is submitted by companies or universities that have part 810 controlled technology and or provide related assistance overseas or to foreign nationals in the United States. This could include large nuclear power design companies, nuclear engineering or service providers, operators or nuclear power plants, universities with foreign nationals working on applied research or development of part 810 controlled nuclear technology or other technical companies.

Sec. 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 Sec. 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.

Sec. 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 Sec. 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 Sec. 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 Sec. 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.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The current collection is conducted via U.S. mail and electronic mail; both for reporting and applications. The program is currently conducting a process improvement study and one major component of the process improvement will be the development and deployment of an electronic licensing system that will provide consolidated electronic intake functionality for all correspondence, which will include reporting requirements under Part 810.

4. Describe efforts to identify duplication.

The Department of Energy is the only government agency that regulates 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), implemented through 10 CFR Part 810. The information required for the Secretary to make a determination that the proposed activity will not be inimical to the interest of the United States is technically and factually specific to each application. As such, this specific information from applicants can only be obtained through the collection and is not collected by any other governmental entity. As part of the interagency review process for Part 810 specific authorizations, DOE provides all

information received from applicants and an NNSA staff analysis for their agency's use in reviewing the request. Specifically, this information is shared with the Departments of Commerce, Defense, and State and the Nuclear Regulatory Commission; and these departments do not separately request any information from applicants to perform their reviews and provide views back to DOE.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Small businesses that engage in the development of production of special nuclear material abroad are subject to the same reporting and application requirements as large businesses.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information is not collected, the Secretary will be unable to authorize the transfer of regulated technologies or the transfer of commercial nuclear reactor technology to certain countries as required under section 57 b of the AEA.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Respondents may be required to report information more than quarterly in very specific circumstances where the technology is considered sensitive nuclear technology per the NNPA or if the U.S. government has proliferation concerns about the foreign entity or destination. Respondents may be required to provide a response to a collection in fewer than 30 days if the technology was transferred out of compliance with the terms of an authorization or without an authorization when needed, or if it is transferred to assist with an imminent radiological emergency and the activity is reported after the assistance is provided to the foreign entity. Respondents must maintain records for as long as the activity is

authorized and to report on those activities at specific intervals. Respondents must submit the technical details of the technology to be transferred or the assistance to be provided, which generally includes proprietary trade secrets. This information is treated as business proprietary as detailed in 5 U.S.C. 552(b)4.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

The 60-day Federal Register's Notice (FRN) for Proposed Agency Information Collection for 10 CFR Part 810 was published on February 27, 2014, FRN# 2014-04984, p. 13048. The 30-day Federal Registrar's Notice for Proposed Agency Information Collection for 10 CFR Part 810 was published on May 23, 2014, FRN# 2014-12800, p. 31928. The Department of Energy did not receive any public comments to the 60-day and 30-day FRNs.

9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payment or gift to respondents is being proposed under this information collection.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

If respondents submit information that they believe to be exempt by law from public disclosure, the documents should be marked as business proprietary under 5 U.S.C. 552(b)4. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the Freedom of Information regulations at 10 CFR 1004.11.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

No questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private, are solicited. Information of a business proprietary nature may be included to determine the technical and legal merits of a request for authorization to transfer nuclear technology to a foreign entity and to inform the

Secretary when making a non-inimicality finding. Public disclosure is governed by the Freedom of Information Act.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

There is a wide variance in the number of reports filed per person and total annual burden per report due to the size and / or complexity of the company, the technology or assistance to be provided and the volume of business. For example, a small business may provide engineering services to a nuclear power plant in a country that is generally authorized. That small business will only be required to submit a report 30 days after the transfer that informs the Department of the transfer or assistance, the end user and the inclusion of a legal protection of further transfer or re-export of the technology to another country (or entity in certain cases). While a company with a high volume of civil nuclear cooperation that may file 20 reports on activities with generally authorized countries or another generally authorized form of assistance as well as five requests for specific authorization to build new reactors in a foreign country (not eligible for a general authorization) will have a larger number of reporting requirements, accordingly.

In addition, the frequency of reporting filed per person varies based upon the proliferation risk associated with the end user or the technology. For higher risk, the reporting frequency increases. As such, the frequency of reporting encompasses monthly, quarterly, semi-annually, and annually reporting requirements.

To calculate the average number of reports filed, we estimated the number of respondents in the following categories: 3 major suppliers and an average submission to be 20 reports a year, 10 large suppliers that submit 5 reports a year, 50 medium suppliers that submit 3 reports a year, 62 small suppliers that submit 1 report a year, and 20 suppliers that, in any given year submit 0 reports, for a total of 322 annual responses between 145 unduplicated respondents. This estimate is based on historical records and we do not anticipate this changing. The average number of reports filed per unduplicated respondent is 2.22. That means that if each of the 145 unduplicated respondents submits the average number of 2.22 reports that will result in 322 reports filed annually. Therefore, the total annual burden hours would equal 966.

Total number of unduplicated respondents: 145
Reports filed per person: 2.22
Total annual responses: 322
Total annual burden hours: 966

Average Burden Per Collection: 3
Per Applicants: 6.66

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

US persons involved in foreign nuclear technology transfers will have an ongoing cost burden. This burden will consist of preparing applications for specific authorizations and adhering to reporting requirements for generally authorized and specifically authorized activities as required in 810.12 and 810.13. A respondent should dedicate an estimated 3 additional hours or \$225 (at \$75 dollars an hour, based upon the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Estimates in the District of Columbia for lawyer/legal occupation services) per collection, (\$499.50 for 2.22 reports filed per person on average per year) to comply with the requirements of the information collection, and use \$500 in support services, copies and administrative requirements. The total annual cost burden is estimated at \$999.50.

14. Provide estimates of annualized cost to the Federal government.

Costs associated with the information collection include the equivalent of 1.5 Full Time Employees at the GS 15 level \$130,000 annually for a total of \$195,000 (as posted by OPM in the GS pay schedule for the Washington DC locality), and the support of equivalent of two DOE National Laboratory FTEs at \$316,500 fully burdened, annually or \$633,000 and various DOE National Laboratory staff for technical reviews at \$410,000 (per the Division's Part 810 internal budget allocation for FY14). Additionally, support will include an estimated cost of \$25,000 for support services and website maintenance (per the Division's Part 810 internal budget allocation for FY14 and projecting into FY15). The website is currently under development; funding for website maintenance will begin in FY15. The estimate of annualized cost to the Federal Government is \$1,263,000.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

The difference between the expired collection of information burden and the new total annual burden is due to an adjustment to the estimate and not a program change due to any rulemaking. The increase hours of burden correlates directly to the increase in U.S. person's engaging in assistance to foreign civilian nuclear programs and to the complexity of the new business models used in the transactions. This means that reporting requires more time to explain and report on foreign transactions. The nature and substance of the information requested are fundamentally the same.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information collected is not intended to be published. No complex analytical techniques will be employed.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

DOE is not seeking approval to not display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19 of OMB

There are no exceptions to the certification statement.