

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 810.11 through 810.14, as applicable. Information is submitted by the applicant 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.

§ 810.11 Information required in an application for specific authorization.

(a) An application letter must include the following information:

- (1) The name, address, and citizenship of the applicant, and complete disclosure of all real parties in interest; if the applicant is a corporation or other legal entity, where it is incorporated or organized; the location of its principal office; and the degree of any control or ownership by any foreign individual, corporation, partnership, firm, association, trust, estate, public or private institution or government agency;
- (2) The country or entity to receive the assistance or technology; the name and location of any facility or project involved; and the name and address of the person for which or whom the activity is to be performed;
- (3) A description of the assistance or technology to be provided, including a complete description of the proposed activity, its approximate monetary value, and a detailed description of any specific project to which the activity relates as specified in §§ 810.9(b)(7), (8), and (9); and
- (4) The designation of any information that if publicly disclosed would cause substantial harm to the competitive position of the applicant.

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

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

- (2) The purpose of the proposed transfer, a description of the applicant's technology control program, and any Nuclear Regulatory Commission standards applicable to the employer's grant of access to the technology;
 - (3) A copy of any confidentiality agreement to safeguard the technology from unauthorized use or disclosure between the applicant and the foreign national;
 - (4) Background information about the foreign national, including the individual's citizenship, all countries where the individual has resided for more than six months, the training or educational background of the individual, all work experience, any other known affiliations with persons engaged in activities subject to this part, and any current immigration or visa status in the United States; and
 - (5) A statement signed by the foreign national that he/she will comply with the regulations under this part; will not disclose the applicant's technology without DOE's prior written authorization; and will not, at any time during or after his/her employment with the applicant, use the applicant's technology for any nuclear explosive device, for research on or development of any nuclear explosive device, or in furtherance of any military purpose.
- (c) An applicant for a specific authorization related to the enrichment of fissile material must submit information that demonstrates that the proposed transfer will avoid, so far as practicable, the transfer of enabling design or manufacturing technology associated with such items; and that the applicant will share with the recipient only information required for the regulatory purposes of the recipient country or to ensure the safe installation and operation of a resulting enrichment facility, without divulging enabling technology.

§ 810.12 Reports.

- (a) Each person who has received a specific authorization shall, within 30 calendar days after beginning the authorized activity, provide to DOE a written report containing the following information:
 - (1) The name, address, and citizenship of the person submitting the report;
 - (2) The name, address, and citizenship of the person for whom or which the activity is being performed;
 - (3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and
 - (4) A copy of the DOE letter authorizing the activity.
- (b) Each person carrying out a specifically authorized activity shall inform DOE, in writing within 30 calendar days, of completion of the activity or of its termination before completion.
- (c) Each person granted a specific authorization shall inform DOE, in writing within 30 calendar days, when it is known that the proposed activity will not be undertaken and the granted authorization will not be used.
- (d) DOE may require reports to include such additional information that may be required by applicable U.S. law, regulation, or policy with respect to the specific nuclear activity or country for which specific authorization is required.
- (e) Each person, within 30 calendar days after beginning any generally authorized activity under § 810.6, shall provide to DOE:

- (1) The name, address, and citizenship of the person submitting the report;
 - (2) The name, address, and citizenship of the person for whom or which the activity is being performed;
 - (3) A description of the activity, the date it began, its location, status, and anticipated date of completion; and
 - (4) A written assurance that the applicant has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization under circumstances in which the conditions in § 810.6 would not be met will take place only if the applicant obtains DOE's prior written approval.
- (f) Individuals engaging in generally authorized activities as employees of persons required to report are not themselves required to submit the reports described in paragraph (e) of this section.
- (g) Persons engaging in generally authorized activities under § 810.6(b) are required to notify DOE that a citizen or national of a country not listed in the Appendix to this part has been granted access to information subject to § 810.2 in accordance with Nuclear Regulatory Commission access requirements. The report should contain the information required in § 810.11(b).
- (h) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Senior Policy Advisor, Office of Nonproliferation and 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 Special provisions regarding Ukraine.

- (a) Pre-activity Reporting Requirements - Any person beginning any generally authorized activity involving Ukraine shall provide to DOE at least ten days prior to beginning that activity a report containing the following information:
- (1) The name, address, and citizenship of the person submitting the report;
 - (2) The name, address, and citizenship of the person for which the activity is to be performed;
 - (3) A description of the activity, the date it is proposed to begin, its location, status, and anticipated date of completion; and
 - (4) A written assurance that the person that is to perform the activity has an agreement with the recipient that any subsequent transfer of material, equipment, or technology transferred under general authorization will not be transferred to a country that is not listed in the Appendix to this part without the prior written approval of DOE.
- (b) Post-activity Reporting Requirements – Every person completing a generally authorized activity in Ukraine shall provide to DOE within ten days following the original transfer of material, equipment or technology written confirmation that such transfer was completed in accordance with the description of the activity provided as required by subsection (a) above.

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.
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.

Reports, whether for a generally authorized activity or for a specifically authorized activity, require the same basic information; citizenship of person submitting the report, end users, technology transferred and any explanation of the business relationship as well as statements that the conditions of the authorization are being met. This has not changed from the former

rule. For a generally authorized activity, the letter must include a clause obligating the end user to no retransfer rights without prior consent; for specific authorization, the conditions include the former condition regarding retransfers and some variation of the Nuclear Suppliers Group guidelines that the end user is dually authorized to possess the technology and no military application or use of the technology.

Under the former rule and in the newly in force Part 810 regulation, a respondent could file one of three types of submissions; reporting of generally authorized activities, reporting on specifically authorized activities or requests for specific authorization.

In the previous regulation, generally authorized activities require reporting as described in 810.13 (d); activities described under 810.7 (b), (c) or (h) but not for activities described under 810.7 (a), (d), (e), (f) or (g) (per 810.13(e)). In the final rule, as published in the Federal Registrar (FR), all activities as generally authorized in 810.6 will now require reporting without exception. The list of generally authorized activities is longer and includes more detailed generally authorized activities. Additionally, in the former rule, 810.7 (a) and (g) are publically available information; in the new rule, these activities are now outside the scope of Part 810 and therefore not reportable. Also, many of the new generally authorized items under the final rule are technologies or assistance that currently require a specific authorization, which requires an application before the transfer and periodic reporting thereafter.

In the final rule, there is an additional reporting requirement for activities to Ukraine located at 810.14. In the previous version of the rule, Ukraine required a specific authorization; in the final rule, Ukraine is considered a generally authorized destination after a pre activity report and a 10 day review period followed by a post activity report. These procedures are necessary due to the political situation in Ukraine so the Secretary can make a non inimicality finding on specific activities. However, the delta between the application, pre, periodic and post activity reports that would have been required under the previous rule when a specific authorization was required and the pre and post activity report under the final rule with the new procedures is a net reduction in reporting burden.

Under the former rule for a generally authorized activity, one report is required per transfer, while for a specific authorization, an application must be filed (per 810.12), a specific authorization report is required as the cooperation starts (810.13(a)), a report is required periodically thereafter, as defined in the conditions of the license (quarterly, semi annually or annually), to update the Department of the activities conducted, and a report is required when the activity is completed (810.13(b)) or when it is known that the activity will not take place at all (810.13(c)). In the burden estimate, we allotted 3 hours per reporting collection. Therefore, a specific authorization application is estimated at 3 hours, the initial report is estimated at 3 hours and periodic reporting 3 hours. (Please note that the reporting is based on common records and book keeping business practices.)

Under the former rule, a list of countries at 810.8(a) contained 73 countries that required case by case review and the Secretary to make a non inimicality finding specifically authorizing the transfer of any technology or assistance except where generally authorized in 810.7. By default, all countries not listed were eligible to transfer nuclear power plant technology and assistance to those countries under a general authorization without prior approval from the Department. The final rule (as well as the SNOPR and NOPR) restructured the list to a positive list of countries, including 51 countries to which the transfer of nuclear power plant technology will be generally authorized. This has a net change of an additional 74 countries that were by default generally authorized for the transfer of nuclear power plant technology but will now require a specific authorization. While this is an increase in the number of countries not eligible for a general authorization by default, in the Department's estimation, the proposed positive generally authorized country list will not result in a substantial increase in the volume of reporting or requests for specific authorization, as these countries have no civilian nuclear programs or plans for civilian nuclear program in the near future.

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 appears at first glance. 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 former rule but that would not be generally authorized under the final rule. 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. 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 (Ukraine, Kazakhstan and the United Arab Emirates). Many of those general authorization reports concern foreign nationals working at U.S. nuclear installations, not nuclear trade activity, which will now be eligible for a general authorization at 810.6(b).

To calculate the average number of reports that will be filed under the final rule, we estimate the number of respondents to be the same but a slight increase in the total reporting burden; in the following categories: 3 major suppliers and an average submission to be 23 reports a year, 10 large suppliers that submit 7 reports a year, 50 medium suppliers that submit 4 reports a year, 62 small suppliers that submit 2 report a year, and 20 suppliers that, in any given year submit 1 reports, for a total of 463 annual responses between 145 unduplicated respondents. The average number of reports filed per unduplicated respondent is 3.19. That means that if each of the 145 unduplicated respondents submits the average number of 3.19 reports that will result in 463 reports filed annually. Therefore, the total annual burden hours would equal 966.

Total number of unduplicated respondents: 145
Reports filed per person: 3.19
Total annual responses: 463
Total annual burden hours: 1389

Average Burden Per Collection: 3
Per Applicants: 9.57

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. Under the former rule, the burden consisted 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. Under the requirements of the former rule, DOE estimated 3 hours or \$225 per collection (\$499.50 for 2.22 reports filed per person on average per year), and \$500 in support services, copies and administrative requirements, for a total annual cost burden estimated at \$999.50.

Under the requirements in the final rule, the burden will consist of preparing applications for specific authorizations and adhering to reporting requirements for generally authorized and specifically authorized activities as required in 810.11 through 810.14. 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 3.19 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 \$1593.41.

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 increased hours of burden correlates directly to the increase in U.S. person's engaging in assistance to foreign civilian nuclear programs, to the complexity of the new business models used in the transactions and to the increased generally authorized activities. 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.

Under the final rule, respondents will see an increase in the generally authorized activities that require reporting due to the increased activities eligible for a general authorization. This increase will be minimal and offset by the decrease in application for specific authorization and reporting previously required for the three large volume trading partners (Kazakhstan, Ukraine and the United Arab Emirates), which will be eligible under a general authorization and the general authorization at 810.6(b) for foreign nationals working at Nuclear Regulatory Commission licensed facilities. The change from the current burden to the anticipated burden per collection is therefore estimated to increase from 2.22 to 3.19 per respondent.

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.