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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 Arms Control (NPAC).

§ 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 notification 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 notification;

(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 technology or information 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 technology or information written confirmation that such transfer was completed in accordance with the description of the activity provided as required by paragraph (a) of this section.

§ 810.15 Violations.

(a) The Atomic Energy Act provides that:

(1) In accordance with section 232 of the AEA, permanent or temporary injunctions, restraining or other orders may be granted to prevent a violation of any provision of the Atomic Energy Act or any regulation or 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 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 or a \$20,000 fine, or both.

(b) 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.

(c) In accordance with section 234 of the AEA, any person who violates any provision of section 57 b. of the AEA, as implemented under this part, shall be subject to a civil penalty, not to exceed \$112,131 per violation, such amount to be adjusted annually for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. If any violation is a continuing one, each day from the point at which the violating activity began to the point at which the violating activity was suspended shall constitute a separate violation for the purpose of computing the applicable civil penalty. The mere act of suspending an activity does not constitute admission that the activity was a violation and does not waive the rights and processes outlined in paragraphs (c)(4) through (14) of this section or otherwise impact the right of the person to appeal any civil penalty that may be imposed.

(1) In order to begin a proceeding to impose a civil penalty under this paragraph (c), the Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, shall notify the

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person by a written notice of violation sent by registered or certified mail to the last known address of such person, of:

- (i) The date, facts, and nature of each act or omission with which the person is charged;
- (ii) The particular provision or provisions of section 57 b. of the AEA, as implemented under this part, involved in each alleged violation;
- (iii) The penalty which DOE proposes to impose, including an explanation of how the factors at paragraph (c)(5) of this section were considered;
- (iv) The opportunity of the person to submit a written reply within 30 calendar days of receipt of such preliminary notice of violation showing why such penalty should not be imposed; and
- (v) The possibility of collection by civil action upon failure to pay the civil penalty.

(2) A reply to the notice of violation must:

- (i) State any facts, explanations, and arguments which support a denial of the alleged violation;
- (ii) Demonstrate any extenuating circumstances or other reason why a proposed penalty should not be imposed or should be mitigated;
- (iii) Discuss the relevant authorities which support the position asserted;
- (iv) Furnish full and complete answers to any questions set forth in the notice of violation; and
- (v) Include copies of all relevant documents.

(3) If a person fails to submit a written reply within 30 calendar days of receipt of a notice of violation, the notice of violation, including any penalties therein, constitutes a final decision, and payment of the full amount of the civil penalty assessed in the notice of violation is due 30 calendar days after receipt of the notice of violation. Such failure to submit a reply constitutes a waiver of the rights and processes outlined in paragraphs (c)(4) through (14) of this section.

(4) The Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, at the written request of a person notified of an alleged violation, may extend in writing, for a rea-

sonable period, the time for submitting a reply.

(5) If a person submits a timely written reply to the notice of violation, the Deputy Administrator for Defense Nuclear Nonproliferation will make a final determination whether the person violated or is continuing to violate a requirement of section 57 b. of the AEA, as implemented under this part. Based on a determination that a person has violated or is continuing to violate a requirement of section 57 b., as implemented under this part, the Deputy Administrator for Defense Nuclear Nonproliferation will issue to that person a final notice of violation that concisely states the violation, the amount of the civil penalty imposed, including an explanation of how the factors in this paragraph were considered, further actions necessary by or available to the person, and that upon failure to timely pay the civil penalty, the penalty may be collected by civil action. The Deputy Administrator for Defense Nuclear Nonproliferation will send such a final notice of violation by registered or certified mail to the last known address of the person. The amount of the civil penalty will be based on:

- (i) The nature, circumstances, extent, and gravity of the violation or violations;
- (ii) The violator's ability to pay;
- (iii) The effect of the civil penalty on the person's ability to do business;
- (iv) Any history of prior violations;
- (v) The degree of culpability;
- (vi) Whether the violator self-disclosed the violation;
- (vii) The economic significance of the violation; and (viii) Such other factors as justice may require.

(6) Any person who receives a final notice of violation under paragraph (c)(5) of this section may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Under Secretary for Nuclear Security within 30 calendar days of receipt of the final notice of violation. If the person does not request a hearing within 30 calendar days, the final notice of violation, including any penalties therein, constitutes a final decision, and payment

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of the full amount of the civil penalty assessed in the final notice of violation is due 45 calendar days after receipt of the final notice of violation.

(7) Upon receipt from a person of a written request for a hearing, the Under Secretary for Nuclear Security or his/her designee, shall:

(i) Appoint a Hearing Counsel; and

(ii) Forward the request to the DOE Office of Hearings and Appeals (OHA). The OHA Director shall appoint an OHA Administrative Judge to preside at the hearing.

(8) The Hearing Counsel shall be an attorney employed by DOE, and shall have all powers necessary to represent DOE before the OHA.

(9) In all hearings under this paragraph (c):

(i) The parties have the right to be represented by a person of their choosing, subject to possessing an appropriate information access authorization for the subject matter. The parties are responsible for producing witnesses on their behalf, including requesting the issuance of subpoenas, if necessary;

(ii) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 18 U.S.C. 1621, dealing with the criminal penalties associated with false statements and perjury;

(iii) Witnesses are subject to cross-examination;

(iv) Formal rules of evidence do not apply, but OHA may use the Federal Rules of Evidence as a guide; and

(v) A court reporter will make a transcript of the hearing.

(vi) The Administrative Judge has all powers necessary to regulate the conduct of proceedings;

(vii) The Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint;

(viii) The Administrative Judge may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other

property for inspection and other purposes; and requests for admission;

(ix) The Administrative Judge may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence;

(x) The Administrative Judge may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing;

(xi) The Administrative Judge may, at the request of a party or on his or her own initiative, dismiss a claim, defense, or party and make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Administrative Judge, or, without good cause, to attend a hearing;

(xii) The Administrative Judge, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Administrative Judge;

(xiii) The parties are entitled to make oral closing arguments, but post-hearing submissions are only permitted by direction of the Administrative Judge;

(xiv) Parties allowed to file written submissions, or documentary evidence must serve copies upon the other parties within the timeframe prescribed by the Administrative Judge;

(xv) The Administrative Judge is prohibited, beginning with his or her appointment and until a final agency decision is issued, from initiating or otherwise engaging in *ex parte* (private)

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discussions with any party on the merits of the complaint;

(xvi) The Administrative Judge is responsible for determining the date, time, and location of the hearing, including whether the hearing will be conducted via video conference; and

(xvii) The Administrative Judge shall convene the hearing within 180 days of the OHA’s receipt of the request for a hearing, unless the parties agree to an extension of this deadline by mutual written consent, or the Administrative Judge determines that extraordinary circumstances exist that require a delay.

(10) Hearings shall be open only to Hearing Counsel, duly authorized representatives of DOE, the person and the person’s counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the person but not in the presence of other witnesses.

(11) The Administrative Judge must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Administrative Judge may issue such orders as may be necessary to consider such evidence in camera including the preparation of a supplemental recommended decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(12) DOE shall have the burden of proving the violation(s) as set forth in the final notice of violation by a preponderance of the evidence. The person to whom the notice of violation is addressed shall have the burden of proving any affirmative defense by a preponderance of the evidence. The amount of the penalty associated with any violation which is upheld shall be adopted by the Administrative Judge unless not supported by the facts, in which event the Administrative Judge

will include such information in the Administrative Judge’s recommended decisions to the Under Secretary for reconsideration of the amount of the penalty based on the Administrative Judge’s resolution of the factual issues.

(13) Within 180 days of receiving a copy of the hearing transcript, or the closing of the record, whichever is later, the Administrative Judge shall issue a recommended decision. The recommended decision shall contain findings of fact and conclusions regarding all material issues of law, as well as the reasons therefor. If the Administrative Judge determines that a violation has occurred and that a civil penalty is appropriate, the recommended decision shall set forth the amount of the civil penalty based on the factors in paragraph (c)(5) of this section.

(14) The Administrative Judge shall forward the recommended decision to the Under Secretary for Nuclear Security. The Under Secretary for Nuclear Security shall make a final decision as soon as practicable after completing his/her review. This may include compromising, mitigating, or remitting the penalties in accordance with section 234 a. of the AEA, as amended. DOE shall notify the person of the Under Secretary for Nuclear Security’s final decision or other action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final decision shall pay the full amount of the civil penalty assessed in the final decision within 30 calendar days unless otherwise determined by the Under Secretary for Nuclear Security.

(15) If a civil penalty assessed in a final decision is not paid as provided in paragraphs(c)(3), (6), or (14) of this section, as appropriate, the Under Secretary for Nuclear Security may request the Department of Justice to initiate a civil action to collect the penalty imposed under this paragraph in accordance with section 234 c. of the AEA.

(16) The Under Secretary for Nuclear Security or his/her designee may publish redacted versions of notices of violation and final decisions.

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