

(c) Distribution by Commission

The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 2074 of this title; or

(2) distribute any special nuclear material or issue a license pursuant to section 2073 of this title to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(d) Establishment of classes of special nuclear material; exemption of materials, kinds of uses and users from requirement of license

The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

(e) Transfer, etc., of special nuclear material

Special nuclear material, as defined in section 2014 of this title, produced in facilities licensed under section 2133 or 2134 of this title may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

(Aug. 1, 1946, ch. 724, title I, § 57, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932; amended Pub. L. 88-489, § 12, Aug. 26, 1964, 78 Stat. 605; Pub. L. 93-377, § 3, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95-242, title III, § 302, Mar. 10, 1978, 92 Stat. 126; Pub. L. 97-415, § 14, Jan. 4, 1983, 96 Stat. 2075; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105-277, div. G, title XII, § 1225(d)(1), Oct. 21, 1998, 112 Stat. 2681-774; Pub. L. 108-458, title VI, § 6803(a), Dec. 17, 2004, 118 Stat. 3768.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-458 substituted “or participate in the development or production of any special nuclear material” for “in the production of any special nuclear material”.

1998—Subsec. (b). Pub. L. 105-277 struck out “the Arms Control and Disarmament Agency,” after “after consultation with” in first sentence and “the Director of the Arms Control and Disarmament Agency,” after “Defense, and Commerce,” in second sentence.

1983—Subsec. (e). Pub. L. 97-415 added subsec. (e).

1978—Subsec. (b). Pub. L. 95-242 substituted “except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent ar-

angement under section 2160 of this title, 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” for “except (1) under an agreement for cooperation made pursuant to section 2153 of this title, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States” in existing provisions and inserted provisos relating to determinations by the Secretary of Energy, the procedures to be followed in processing authorization requests, the export of component parts, and the jurisdiction of the Secretary of Energy.

1974—Subsec. (d). Pub. L. 93-377 added subsec. (d).

1964—Pub. L. 88-489 amended section generally, and among other changes, included all special nuclear materials within the section, struck out condition that such material be “the property of the United States”, included delivery, acquisition, ownership and receiving possession of or title to any special nuclear material within the acts prohibited to persons, prohibited the Commission from issuing a license pursuant to section 2073 of this title if the Commission finds that the issuance would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public, and extended the power of the Commission to refuse to distribute any special nuclear material if it finds that the distribution would constitute an unreasonable risk to the health and safety of the public.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2077a. Interagency review of applications for the transfer of United States civil nuclear technology**(a) Report on transfers to covered foreign countries**

Not less frequently than every 90 days, the Secretary of Energy shall submit to the appropriate congressional committees a report that includes—

(1) a description of the authorizations under section 2077(b) of this title to transfer United States civil nuclear technology to a covered foreign country during the preceding 90 days; and

(2) a statement of whether any agency required to be consulted under that section or

pursuant to regulation objected to or sought conditions on each such transfer.

(b) Determination of technologies to be protected

(1) In general

Not later than 90 days after November 25, 2015, and every five years thereafter, the Secretary of Energy shall—

(A) in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Defense, the Director of National Intelligence, and the Nuclear Regulatory Commission, determine the critical United States civil nuclear technologies that should be protected from diversion to a military program of a covered foreign country, including with respect to a naval propulsion or weapons program; and

(B) notify the appropriate congressional committees with respect to the determination and the technologies covered by the determination.

(2) Notification

(A) In general

Except as provided in subparagraph (B), not later than 14 days before making an authorization under section 2077(b) of this title for the transfer of a technology covered by a determination under paragraph (1) to a covered foreign country, the Secretary of Energy shall submit to the appropriate congressional committees a report that includes—

(i) a notification of the intention of the Secretary to make the authorization for the transfer of such technology; and

(ii) a statement of whether any agency required to be consulted under such section 2077(b) of this title or pursuant to regulation objected to or sought conditions on the transfer.

(B) Waiver of deadline

The Secretary may waive the requirement under subparagraph (A) to submit the report required by that subparagraph not later than 14 days before making an authorization for the transfer of a technology covered by a determination under paragraph (1) to a covered foreign country if the Secretary—

(i) determines that an imminent radiological hazard exists; and

(ii) not later than 7 days after determining that such hazard exists, submits to the appropriate congressional committees—

(I) a certification that the hazard exists;

(II) a justification for the waiver; and

(III) the notification required by clause (i) of subparagraph (A) and the statement required by clause (ii) of that subparagraph.

(c) Consultations with intelligence community

(1) In general

The Secretary of Energy shall expeditiously revise part 810 of title 10, Code of Federal Regulations, to ensure that the Director of National Intelligence—

(A) is consulted with respect to the views of the intelligence community (as defined in section 3003(4) of title 50) with respect to each authorization issued under section 2077(b) of this title for the transfer of United States civil nuclear technology to a covered foreign country before the determination to approve or disapprove the request for the authorization; and

(B) is provided with an opportunity to present the views of the Director and the intelligence community on the national security risks of the transfer, if any.

(2) Submission to Congress

The Secretary of Energy, jointly with the Director of National Intelligence, shall include the results of consultations conducted under paragraph (1) in each report under subsection (a) and each notification under subsection (b)(2).

(d) Report on compliance of covered foreign countries and end-users

Not less frequently than annually, the Secretary of Energy shall submit to the appropriate congressional committees a report that includes—

(1) an assessment of whether each covered foreign country is in compliance with its obligations under any authorization for the transfer of United States civil nuclear technology under section 2077(b) of this title;

(2) with respect to any covered foreign country that is not in compliance with such obligations—

(A) a description the efforts of the United States to bring the country into compliance;

(B) an evaluation of the result of such efforts; and

(C) an assessment of the options available to the Secretary as a result of the country not being in compliance;

(3) an assessment of whether each end-user to which United States civil nuclear technology is transferred pursuant to an authorization under such section 2077(b) of this title is in compliance with the obligations of the end-user under that authorization; and

(4) a description of any consequences for the end-user or the exporter of the technology if the end-user is not in compliance with such obligations.

(e) Report on transfers to all foreign countries

(1) In general

Concurrent with the submission to Congress of the budget of the President for a fiscal year under section 1105(a) of title 31, the Secretary of Energy shall submit to the appropriate congressional committees a report on the activities of the Department of Energy associated with the review of applications for authorization under section 2077(b) of this title to transfer United States civil nuclear technology to any foreign country.

(2) Elements

The report required by paragraph (1) shall include—

(A) the number of applications for authorization under section 2077(b) of this title to

transfer United States civil nuclear technology to a foreign country submitted during the year preceding the submission of the report;

(B) the length of time each such application was under review;

(C) for each such application, an identification of any officer to which the authorization under such section 2077(b) of this title was delegated pursuant to section 2201(n) of this title;

(D) the number of such applications that were granted; and

(E) a description of efforts to streamline the review of such applications, taking into account the proliferation and diversion potential of end-users in the country to which United States civil nuclear technology would be transferred pursuant to such applications.

(f) Notifications of potential diversions

The Director of National Intelligence shall notify the Department of Energy and the appropriate congressional committees not later than 30 days after the date on which the Director determines that there is credible intelligence that United States civil nuclear technology is being or has been diverted—

(1) to a military program in a foreign country to which the transfer of the technology was authorized under section 2077(b) of this title; or

(2) to a foreign country to which the transfer of the technology was not so authorized.

(g) Guidelines

Not later than 60 days after November 25, 2015, the Secretary of Energy shall issue guidance with respect to the use of the clear and intended authority of the Secretary under section 2282 of this title to impose civil penalties, including fines and debarment, and to make referrals to the Attorney General for prosecution, for violations of the terms of authorizations for the transfer of United States civil nuclear technology issued under section 2077(b) of this title.

(h) Report on transfer of sensitive items

(1) In general

Not later than 180 days after November 25, 2015, and annually thereafter, the President shall submit to the appropriate congressional committees a report—

(A) describing the efforts of covered foreign countries to prevent the transfer of sensitive items, including efforts to improve the prevention of the transfer of such items; and

(B) assessing the adequacy of such efforts.

(2) Sensitive items defined

In this subsection, the term “sensitive items” means goods, services, and technologies described in section 2(a) of the Iran, North Korea, and Syria Nonproliferation Act (Public Law 106-178; 50 U.S.C. 1701 note).

(i) Definitions

In this section:

(1) Appropriate congressional committees

The term “appropriate congressional committees” means—

(A) the congressional defense committees; (B) the Committee on Energy and Natural Resources, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(C) the Committee on Energy and Commerce, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Covered foreign country

The term “covered foreign country” means a foreign country that is a nuclear-weapon state, as defined by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow July 1, 1968, but does not include the United States, the United Kingdom, or France.

(Pub. L. 114-92, div. C, title XXXI, §3136, Nov. 25, 2015, 129 Stat. 1209; Pub. L. 115-232, div. C, title XXXI, §3116(c), Aug. 13, 2018, 132 Stat. 2291.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2016, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

AMENDMENTS

2018—Subsec. (e)(2)(C) to (E). Pub. L. 115-232 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 3 of Pub. L. 114-92, 129 Stat. 745. See note under section 101 of Title 10, Armed Forces.

DELEGATION OF AUTHORITY PURSUANT TO SECTION 3136(h) OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

Memorandum of President of the United States, May 10, 2016, 81 F.R. 31161, provided:

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate functions and authorities vested in the President by section 3136(h) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92) (the “Act”) to the Secretary of State.

Any reference in this memorandum to the Act shall be deemed to be a reference to any future act that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 2078. Congressional review of guaranteed purchase price, guaranteed purchase price period, and criteria for waiver of charges

Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 2076 of this title, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 2073 of this title, the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge shall be submitted to the Energy