[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 821

[DOE-HQ-2025-0175]

RIN 1901-AB73

Implementing Voluntary Agreements Under the Defense Production Act

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule codifies standards and procedures the Department of Energy will follow when developing and carrying out voluntary agreements and plans of action under the Defense Production Act. The Defense Production Act provides a defense from antitrust laws with respect to any action taken to develop or carry out any voluntary agreement or plan of action when certain criteria are met. The rule will apply the Defense Production Act's long-standing provisions and will be set out in a new and dedicated part in the Code of Federal Regulations.

DATES: This interim rule will be effective on and comments are due by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Documents relevant to this rulemaking are posted on the Federal eRulemaking Portal at *www.regulations.gov* (Docket: DOE-HQ-2025-0175).

Submit comments, labeled "**Implementing Voluntary Agreements Under Section 708 of the Defense Production Act of 1950**, **RIN 1901-AB73**," using the *Federal eRulemaking Portal: www.regulations.gov.*

Instructions: All submissions must include the agency name, "Department of Energy," and docket number, DOE-HQ-2025-0175, for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Do not submit any information you consider to be private, Confidential Business Information (CBI), or

other information whose disclosure is restricted by statute.

Docket: For access to the docket to read comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Background

The Department of Energy ("DOE") is issuing this interim final rule to codify procedures for implementing voluntary agreements pursuant to Section 708 of the Defense Production Act of 1950 ("DPA"), Pub. L. 81-774 (Sept. 8, 1950) (codified at 50 U.S.C. 4558). Section 708(c)(1) of the DPA provides that upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense. 50 U.S.C. 4558(c)(1).

The President effectively made such a finding when signing Executive Order ("E.O.") 14302 (Reinvigorating the Nuclear Industrial Base). 90 FR 22595 (May 29, 2025). E.O. 14302, among other things, emphasized that the United States currently faces a variety of serious energy-related challenges ultimately affecting national security and preparedness. These challenges include the global race to dominate in artificial intelligence, a growing need for energy independence, and the need for access to uninterruptible power supplies for national security. *Id.* It noted further that the United States' nuclear fuel cycle infrastructure has severely atrophied, leaving the Nation heavily dependent on foreign sources of uranium as well as for uranium enrichment and conversion services. *Id*. The seriousness of this situation is both well-known and well-documented. *See, e.g.*, EIA, U.S. Nuclear Generators Import Nearly All the Uranium Concentrate They Use, In-Brief Analysis (Jan. 30, 2025) (detailing nearly complete reliance on imported uranium concentrate used in making nuclear fuel for U.S. reactors); America's Awkward Energy Insecurity Problem, Foreign Policy (Jan. 20, 2025) (highlighting Russia's current complete monopoly on the commercial production of fuel that would be used in the coming generation of advanced nuclear plants that would provide the extra power needed to run data centers and power artificial intelligence); *and* U.S. Ramps Up Hunt for Uranium to End Reliance on Russia, NY Times, Sept. 30, 2024 (quoting one uranium mining executive's characterization of domestic uranium production as being like "a broken arm that's been in a cast for a long time . . . The muscle atrophies, and that's where our industry is."). This situation is further exacerbated by the fact that since 2017, 87 percent of all new nuclear reactors that have been installed are based on reactor designs from two foreign countries. 90 FR 22595.

Reversing this situation requires swift and decisive action "to jumpstart America's nuclear energy industrial base and ensure our national and economic security by increasing fuel availability and production, securing civil nuclear supply chains, improving the efficiency with which advanced nuclear reactors are licensed, and preparing our workforce to establish America's energy dominance and accelerate our path towards a more secure and independent

energy future." *Id*. Although some initial steps have been taken to address current vulnerabilities, such as the enactment of the Prohibiting Russian Uranium Imports Act, Pub. L. 118-62 (May 13, 2024) and the repurposing of $2.72 billion in funding intended for the Civilian Nuclear Credit Program towards the development of domestic uranium enrichment capacity, *see* Consolidated Appropriations Act, Div. D – Energy and Water Development and Related Agencies Appropriations Act, 2024, Sec. 312 (March 9, 2024), these steps, while critical, are insufficient to ensure that the United States can break its current dependency on foreign-sourced uranium and develop a reliable supply of domestically-sourced nuclear fuel.

Additionally, a recent DOE report documented the status of U.S. grid reliability and security. See DOE, Report on Evaluating U.S. Grid Reliability and Security (July 7, 2025). Significantly, the report noted that numerous factors increase the risks to the reliability of the U.S. electric grid. These factors, such as the current pace of retirement of electric power capacity generation plus load growth (which is projected to increase the risk of power outages by 100-fold by 2030), the insufficiency of the currently planned replacement generation supply, and the projected load growth of Artificial Intelligence ("AI") innovation, point to the urgent necessity of robust and rapid reforms. These reforms are crucial to powering enough AI data centers while safeguarding grid reliability. See generally, DOE, Resource Adequacy Report – Evaluating the Reliability and Security of the United States Electric Grid, at 1 (July 2025).

The projected increases in demand are expected to severely stress the electrical grid. These expected load increases are already being reflected in the mandatory integrated resource plans ("IRPs") that utilities routinely file with state regulators regarding their planned usage of various resources to meet those projected energy demands. (An IRP is essentially a forecast of a utility's load obligations and its plan to reliably meet those obligations by supply side and demand side resources over a set period of time.) In at least one case, projected increases as a result of demands from new businesses moving into the state – including AI data centers -- were identified as a key factor for the filing of an updated IRP highlighting a significant increase in its

projected electrical energy demands. See Georgia Power, 2023 Integrated Resource Plan Update, at 1-2 and 9-10 (noting Georgia's significant increase in projected energy load demands from increased economic activity, including from AI data centers). Utility commissions also recognize the considerable lead-time currently required to incorporate new nuclear power reactors into the electrical grid. See State of North Carolina Utilities Commission (Raleigh), In the Matter of Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress, Docket No. E-100, Sub 190, Order Accepting Stipulation, Granting Partial Waiver of Commission Rule R8-60A(d)(4), and Providing Further Direction for Future Planning, at 31, 63, 66, 92 (Note 6), 122-127, and 178-79 (Nov. 1, 2024) (supporting utility's plans for continued efforts towards adopting advanced reactor technology to help address projected load demand increases, including from the projected growth in data centers, and approving plans to develop power sourced from advanced nuclear generation while recognizing the accompanying time-related risks and encouraging the utility to move expediently to ensure new nuclear capacity is developed as soon as reasonably possible); and In re: Virginia Electric and Power Company's 2024 Integrated Resource Plan, at 8, 13, and Appendix 2A (Oct. 15, 2024) (projecting expected load growth to significantly outpace average PJM growth and attributing that a large part of that growth to data centers and electrification in the transportation sector).

To address the current national security risks to the energy supply of the United States, E.O. 14302 ordered DOE to utilize the authority provided to the President under section 708(c)(1) of the DPA, which was delegated to the Secretary of Energy pursuant to E.O. 13603 (National Defense Resources Preparedness), 77 FR 16651 (March 22, 2012). *See* E.O. 14302, Sec. 3(e), 90 FR 22596 (ordering the Secretary of Energy to utilize the President's authority under section 708(c)(1) of the DPA) *and* E.O. 13603, Sec. 403, 77 FR 16656 (authorizing the Secretary of Energy to adopt rules pursuant to section 708 of the DPA "that incorporate standards and procedures by which voluntary agreements and plans of action may be developed

and carried out."). Section 708 of the DPA provides that an agency may develop and carry out voluntary agreements with industry to provide for the national defense or its preparedness programs. Industry participants in any voluntary agreement or plan of action under the DPA are provided with immunity for any civil or criminal action brought under the antitrust laws of the United States or any similar state law. 50 U.S.C. 4558(j). This antitrust immunity is limited to actions taken to develop or carry out a voluntary agreement or plan of action, in order to effectuate the purpose identified in the voluntary agreement or plan of action. *Id*. Any antitrust immunity conferred on the participants in a voluntary agreement or plan of action does not apply to any act or omission occurring after the termination of the voluntary agreement or plan of action. *Id*. DOE now seeks to promulgate procedures implementing Section 708 of the DPA, to initiate the voluntary agreement process for the domestic nuclear energy industry as ordered in E.O. 14302. DOE is not the first federal agency to promulgate rules implementing Section 708 of the DPA. *See* 46 FR 2349 (Jan. 9, 1981) (promulgating Federal Emergency Management Agency (FEMA) regulations relating to voluntary agreements under section 708 of the DPA and concurred on by the Departments of Agriculture, Defense, Interior, Commerce, and Transportation). The rule details, among other things, its overall scope, the applicability of anti-trust protections for entities operating under a voluntary agreement, the procedures for the maintenance and availability of certain materials, meeting attendance provisions, and the make-up of voluntary agreement and plan of action participants. DOE seeks to implement this interim final rule pursuant to the authority granted to it under section 708(c)(1) of the DPA and E.O. 14302 and delegated to the Secretary of Energy through E.O. 13603.

II. Basis for the Rule

This interim final rule is based on the statutory authority granted to the President and delegated to the Secretary of Energy to seek voluntary agreements and develop plans of action with domestic nuclear energy companies to address the direct threat to the national defense or

preparedness programs of the United States as it relates to the nuclear industrial base. This action follows the provisions of section 708 of the DPA and E.O. 13603 and E.O. 14302.

E.O. 14302 instructed DOE to utilize the authority provided to the President under section 708(c)(1) of the DPA (and delegated to the Secretary of Energy through E.O. 13603) to seek voluntary agreements with domestic nuclear energy companies and to prioritize agreements with those companies that have achieved objective milestones for the cooperative procurement of LEU and HALEU. 90 FR 22596. Section 708(e)(1) of the DPA requires the Secretary of Energy to promulgate rules in accordance with the Administrative Procedure Act ("APA"), incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out. See 50 U.S.C. 4558(e)(1). Section 708(e) also sets forth the rulemaking process for DOE to generally follow, including the application of a 30-day delay between the publication of a final rule and the rule's effective date. 50 U.S.C. 4558(e)(2(B). Relatedly, Section 709 of the DPA permits the waiver of the notice and comment requirements where urgent and compelling circumstances make providing an opportunity for notice and comment of not less than 30 days before the promulgation of a final rule impracticable. 50 U.S.C. 4559(b)(1)

The provisions in this rule follow those standards and procedures provided in Section 708 of the DPA. DOE's promulgation of this rule does not deviate from those established standards and procedures.

III. Basis for Issuing an Interim Final Rule

In light of the presence of urgent and compelling circumstances, DOE is availing itself of the provisions under section 709 of the DPA while remaining consistent with section 708 to ensure that the public has a meaningful opportunity to provide comments. To this end, DOE is issuing this interim final rule but delaying its effective date until the end of a concurrent 30-day comment period.

A. Urgent and Compelling Circumstances Exist

Section 709 expressly exempts any regulation issued under the DPA from the administrative procedures of the APA. See 50 U.S.C. 4559(a) (explicitly exempting sections 551 through 559 of title 5 from any regulation issued under the DPA). That provision also prescribes rulemaking procedures including the opportunity for notice and comment. See 50 U.S.C. 4559(b) ("…any regulation issued under this chapter shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5.")

Notwithstanding the foregoing, Section 709 allows for the waiver of the notice and comment requirements and the issuance of regulations on a temporary basis when the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable, the regulation is issued on a temporary basis, and the publication of such temporary regulation is accompanied by the finding, a brief statement of the reasons for such finding, and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final. See 50 U.S.C. 4559(b)(2).

DOE finds that urgent and compelling circumstances make compliance with notice and comment requirements impracticable. The President invoked the National Emergencies Act (50 U.S.C. 1601, *et seq*) and declared a national energy emergency in January of this year through the issuance of E.O. 14156 (Declaring a National Energy Emergency), 90 FR 8433 (Jan. 29, 2025), noting that the inadequacy of the current energy supply and infrastructure. E.O. 14156 also recognized that the integrity and expansion of the Nation's energy infrastructure is an immediate and pressing priority for the protection of the United States' national and economic security and that hostile state and non-state foreign actors have targeted the Nation's domestic energy infrastructure, weaponized current U.S. reliance on foreign energy, and abused their ability to cause dramatic swings within international commodity markets. 90 FR 8433. E.O. 14302 also identifies the peril facing the Nation with respect to its energy needs and determined that the current state of domestic energy needs requires expeditious action and authorized the

Secretary of Energy to take immediate steps to address this situation through section 708 of the DPA.

E.O. 14302 identifies the national defense threat facing the Nation with respect to its domestic energy needs. E.O. 14302 determined that expeditious action is required to address this domestic energy national security threat and authorized the Secretary of Energy to take immediate steps to strengthen the domestic nuclear energy industry through section 708 of the DPA. Following the normal notice and comment process would hamper DOE's ability to expeditiously engage with industry on how to reverse the current trend of declining energy capacity in the face of projected significant increases in energy demand that, if left unmet, will pose severe national and economic security consequences for the Nation. Given the urgent nature of this national defense threat, the resulting need for speed and certainty, and the fact that this rulemaking sets out only the procedural requirements that directly follow section 708 of the DPA, the administrative process under 5 U.S.C. 551 through 5 U.S.C. 559 is impracticable and contrary to the public interest.

Given these findings, the President effectively made the urgent and compelling finding, now reiterated by the Secretary of Energy, that the United States currently faces a variety of serious energy-related challenges ultimately affecting national security and preparedness, including a global race to dominate in artificial intelligence, a growing need for energy independence, and access to uninterruptible power supplies for national security. And as noted earlier, these challenges are well-documented and well-known. Accordingly, in light of these facts, the Secretary of Energy finds that following the typical notice and comment process would hamper DOE's ability to expeditiously engage with industry on ways to reverse the current trend of declining energy capacity in the face of projected significant increases in energy demand that, if left unmet, will pose severe national and economic security consequences for the Nation.

Moreover, this interim final rule follows those long-standing procedural provisions already enacted as part of the DPA and merely prescribes how DOE will act when seeking to

develop voluntary agreements under Section 708 of the DPA as well as the process for implementing those voluntary agreements. These are strictly procedural provisions and comparable to those already in place elsewhere to implement this provision. See 44 CFR 332 (providing Federal Emergency Management Agency procedures for implementing voluntary agreements under Section 708). Given the determinations reflected in E.O. 14156 and E.O. 14302, the nature of this rulemaking in setting out procedural requirements that directly follow section 708 of the DPA, and the need for speed and certainty, DOE finds notice and comment impracticable and contrary to the public interest. Accordingly, consistent with section 709 of the DPA, DOE is implementing this rule on a temporary basis.

B. DOE Solicits Comment.

DOE also recognizes, however, that section 708 of the DPA provides that the rule shall not be effective less than 30 days after its publication. Given this required delay in the effective date and DOE's interest in ensuring an opportunity for public comment, DOE is providing a 30-day comment period for the public to provide feedback on this procedural rule. That comment period will run concurrently with the 30-day delayed effective date. With these steps, DOE is satisfying its rulemaking procedural obligations under sections 708 and 709 of the DPA.

To the extent that public comment may inform DOE as to whether it has legal authority to make a different choice than the one it has taken in this interim final rule, DOE's solicitation of public comment for 30-days following the publication of the rule is intended to accommodate that possibility. And though DOE seeks comments to obtain the public's views, such comments could not alter the legal realities that create the swift need for such a change. DOE notes that this interim final rule is not effective until 30 days after publication in the Federal Register and it will consider any comments submitted in response to this action and will address those comments when issuing a final rule, consistent with the procedure provided in section 709.

IV. Procedural Requirements

A. Executive Orders 12866 and 13563

E.O. 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (Jan. 21, 2011) requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit "significant regulatory actions" to OIRA for review. OIRA has determined that this regulatory action does not constitute a "significant regulatory action" under E.O. 12866, as supplemented by E.O. 13563, and has not reviewed this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As previously stated, Section 709 expressly exempts any regulation issued under the DPA from the administrative procedures of the APA. See 50 U.S.C. 4559(a) (explicitly exempting sections 551 through 559 of title 5 from any regulation issued under the DPA). Additionally, Section 709 allows for the waiver of the notice and comment requirements, and DOE finds that urgent and compelling circumstances make compliance with notice and comment requirements impracticable. Accordingly, no regulatory flexibility analysis has been prepared for this interim final rule. See 5 U.S.C. 601(2), 603(a).

C. National Environmental Policy Act

NEPA does not require agencies to prepare a NEPA analysis before establishing or updating agency procedures. Agency procedures for implementing the voluntary agreement and plans of action provisions under section 708 of the DPA are not subject to NEPA. DOE has also issued regulations that are currently in effect that note certain types of actions that are excepted from NEPA review. Under those regulations, 10 CFR part 1021, appendix A, includes an exception for procedural rulemakings from NEPA review. See 90 FR 29676 (July 3, 2025). That exception, Exception A6, applies to rulemakings that are strictly procedural, such as rulemakings establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services. DOE has determined that this interim final rule falls within the scope of A6 and is not subject to review under NEPA. Therefore, DOE does not intend to conduct a NEPA analysis of this interim final rule.

D. Executive Order 13132

E.O. 13132 "Federalism", 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and

carefully assess the necessity for such actions. DOE has examined the interim final rule and has determined that it does not preempt State law beyond what is already provided for under Federal law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

E. Executive Order 13175

Under E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this interim final rule will not have such effects and has concluded that E.O. 13175 does not apply to this interim final rule.

F. Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This interim final rule does not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

G. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include a regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposed a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments. 2 U.S.C. 1534. This interim final rule does not result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act

This interim final rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

I. Executive Orders 14154, 14192, and 14302

DOE has examined this interim final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154 “Unleashing American Energy,” E.O. 14192,

"Unleashing Prosperity Through Deregulation," and E.O. 14302, "Reinvigorating the Nuclear Industrial Base." This interim final rule is a necessary prerequisite to implement any voluntary agreement or plan of action required to address the domestic energy crisis identified in E.O. 14302. Accordingly, DOE has developed this regulatory action as a "statutorily required rulemaking," pursuant to Executive Order 14192, Unleashing Prosperity Through Deregulation.

J. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress and to the Comptroller General a report on this interim final rule. The report will state that it has been determined that this interim final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule; request for comments.

List of Subjects in 10 CFR Part 821

Administrative practice and procedure, Advisory committees, Antitrust, Classified information, Confidential business information, Emergency preparedness, Freedom of information, Industrial facilities, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Organization and functions, Reporting and recordkeeping requirements, Security measures.

Signing Authority

This document of the Department of Energy was signed on August 20, 2025, by Chris Wright, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on August 21, 2025.

Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons stated in the preamble, DOE is amending chapter III of title 10 of the Code of Federal Regulations by adding a new part 821 as set forth below:

PART 821 — IMPLEMENTING VOLUNTARY AGREEMENTS UNDER THE DEFENSE PRODUCTION ACT

Sec.

Authority: 42 U.S.C. 2201; 50 U.S.C. 4558; Executive Order 13603; Executive Order 14302.

§ 821.1 General provisions.

(a) *General applicability.*

(1) Pursuant to section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558), the Secretary of Energy (or the appropriate official identified under 50 U.S.C. 4558(c)(2)), as delegated by the President, may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements and plans of action to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to help provide for the national defense.

(2) Implementation of this part shall conform to the provisions provided under section 708 of the Defense Production Act (DPA) of 1950, as amended (50 U.S.C. 4558).

(b) ***Secretary of Energy (or the appropriate delegated Department of Energy official).***

(1) As used in this part, Secretary of Energy (or the appropriate delegated Department of Energy official) is the Secretary of Energy or a Department of Energy official who is delegated with the responsibility of overseeing a voluntary agreement who, pursuant to a delegation or redelegation of the functions given to the President by section 708 of the Defense Production Act of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement and plans of action.

(2) In the context of energy-related issues, the use of voluntary agreements and plans of action, as authorized by section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Secretary of Energy (or the appropriate delegated Department of Energy official), as provided by Executive Order 13603, Section 403 and Executive Order 14302, Section 3.

(3) The Secretary of Energy (or the appropriate delegated Department of Energy official) shall carry out functions overseeing a voluntary agreement and plan of action.

(c) *Implementation.* This part applies to the development and carrying out under section 708 of the DPA, as amended, of all voluntary agreements and plans of action developed with domestic nuclear energy companies pursuant to the Secretary's authority under Executive Order 13603, Section 403.

(d) *Rules.* The rules in this part void any provision of a voluntary agreement to which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) *Commencement of agreements.*

(1) A voluntary agreement or plan of action may not become effective unless and until –

(i) The Secretary of Energy (or the appropriate delegated Department of Energy official) approves the voluntary agreement or plan of action and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of section 708(c)(1) of the DPA and submits a copy of such agreement to the Congress; and

(ii) The Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the *Federal Register*.

(2) Each voluntary agreement or plan of action that becomes effective under paragraph (e)(1) of

this section shall expire 5 years after the date it becomes effective (and at 5-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the Secretary of Energy (or the appropriate delegated Department of Energy official) and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (e)(1) of this section with respect to such voluntary agreement or plan of action and publish such certification or finding in the *Federal Register*, in which case, the voluntary agreement or plan of action may be extended for an additional period of 5 years.

(f) *Advisory committees.*

(1) Pursuant to section 708(d) of the DPA, the Secretary of Energy (or the appropriate delegated Department of Energy official) may establish such advisory committees as deemed to be necessary for developing or carrying out voluntary agreements or plans of action. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting. A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying subject to the exemptions from disclosure provided under 5 U.S.C. 552(b)(1), (3), and (4). Such advisory committees shall comply with this part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

(2) Notwithstanding any other provision of law, consistent with section 708(n) of the Defense Production Act of 1950 (50 U.S.C. 4558(n)), chapter 10 of Title 5 and any other provision of Federal law relating to advisory committees shall not apply to –

(i) the consultations referred to in 50 U.S.C. 4558(c)(1); or

(ii) any activity conducted under a voluntary agreement or plan of action approved pursuant to

this section that complies with the requirements of 50 U.S.C. 4558 and this part.

(h) *Plan of action*. The term "plan of action" means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

(i) *Antitrust laws*. The term "antitrust laws" has the same meaning given in 50 U.S.C. 4558(b)(1).

(j) *Petitions.* Interested persons may petition the Secretary of Energy for the issuance, amendment, or repeal of this rule.

§ 821.2 Prerequisites for agreements and plans of action.

(a) *Finding by the President.* Upon a finding by the President that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the Secretary (or the appropriate delegated Department of Energy official) may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the Secretary (or the appropriate delegated Department of Energy official), of voluntary agreements and plans of action to help provide for the national defense.

(b) *The Secretary and other Senate-confirmed appointees.* The Secretary (or the appropriate delegated Department of Energy official) may engage in the activities described in paragraph (a) of this section so long as they:

(1) Are individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate;

(2) Consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (a) of this section; and

(3) Upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (a) of this section.

(c) *Delegations.*

(1) The Secretary (or the appropriate delegated Department of Energy official) may further delegate tasks in developing voluntary agreements to an appropriate DOE officer working under the supervision of the Secretary (or the appropriate delegated Department of Energy official).

(2) The meetings held to develop the voluntary agreements shall be chaired by an individual as identified in paragraph (b) of this section and 50 U.S.C. 4558(c)(2) or by that person's delegate.

§ 821.3 Developing voluntary agreements and plans of action.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements and plans of action may be developed through consultation, pursuant to section 708(c) of the Defense Production Act (DPA) of 1950.

(b) *Proposal to develop an agreement.*

(1) In cases where the Secretary of Energy (or the appropriate delegated Department of Energy official) wishes to develop a voluntary agreement or plan of action after conducting meetings also attended by the Attorney General (or the Attorney General's delegate) and the Chairman of the Federal Trade Commission (or the Chairman's delegate) to discuss the development of a voluntary agreement or plan of action, the Secretary of Energy (or the appropriate delegated Department of Energy official) shall submit to the Attorney General a document proposing the agreement. The proposal will include statements as to: The purpose of the agreement or plan of action; the factual basis for making the finding required in section 708(c)(1) of the DPA; the proposed participants in the agreement or plan of action; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the Secretary of Energy (or the appropriate delegated Department of Energy official) shall then initiate one or more meetings of interested persons to develop the agreement or plan of action.

(c) *Conduct of meetings held to develop the agreement or plan of action.*

(1) The parties participating in any voluntary agreement or plan of action shall provide to the

Secretary of Energy (or the appropriate delegated Department of Energy official), the Attorney General, and the Chairman of the Federal Trade Commission adequate written notice of time, place, and nature of each meeting to develop a voluntary agreement. The Secretary of Energy (or the appropriate delegated Department of Energy official) shall also publish in the *Federal Register* notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

(2) The Secretary of Energy (or the appropriate delegated Department of Energy official) shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the Secretary of Energy (or the appropriate delegated Department of Energy official) limits attendance pursuant to § 821.6 of this part.

(4) Any interested person may, as set out in the relevant *Federal Register* meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be given the opportunity for oral presentation.

(d) *Maintenance of records.*

(1) The Secretary of Energy (or the appropriate delegated Department of Energy official) is responsible for the making of a full and verbatim transcript of each meeting. The Chairman of such meeting shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Secretary of Energy (or the appropriate delegated Department of Energy official), and any other party or repository required by law.

(2) The Secretary of Energy (or the appropriate delegated Department of Energy official) shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying to the extent required by § 821.6 of this part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The Secretary of Energy (or the appropriate delegated Department of Energy official) must approve the agreement and certify in writing that it is necessary to carry out the purposes of section 708(c)(1) of the DPA, submit the agreement and certification to the Attorney General with a request for a written finding, and submit a copy of such agreement or plan to Congress;

(2) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of section 708(c)(1) of the DPA may not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement or plan of action and publishes such finding in the *Federal Register*.

(3) Each voluntary agreement or plan of action that has become effective shall expire 5 years after the date it becomes effective (and at 5-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the Secretary (or the appropriate delegated Department of Energy official) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraphs (e)(1) through (2) of this section with respect to such voluntary agreement or plan of action and publishes such certification or finding in the *Federal Register*, in which case, the voluntary agreement or plan of action may be extended for an additional period of 5 years.

§ 821.4 Carrying out voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.*

(1) The Secretary of Energy (or the appropriate delegated Department of Energy official) when overseeing a voluntary agreement shall initiate, or approve in advance, each meeting of the agreement participants held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The Secretary of Energy (or the appropriate delegated Department of Energy official) shall provide to the Attorney General and the Chairman of the Federal Trade Commission, and Congress adequate prior notice of the time, place, and nature of each meeting to carry out a voluntary agreement or plan of action, and a proposed agenda of each meeting. The Secretary of Energy (or the appropriate delegated Department of Energy official) shall publish in the Federal Register, reasonably in advance of each meeting to carry out a voluntary agreement or plan of action in accordance with 50 U.S.C. 4558(h)(8), a notice of the time, place, and nature of the meeting. If the Secretary of Energy (or the appropriate delegated Department of Energy official) has determined, pursuant to § 821.6 of this part, to limit attendance at the meeting, the Secretary of Energy (or the appropriate delegated Department of Energy official) shall publish the *Federal Register* notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the Secretary of Energy (or the appropriate delegated Department of Energy official) has restricted attendance pursuant to § 821.6 of this part. A person attending a meeting under this section may present written data, views, and arguments (with or without opportunity for oral presentation) to any limitations on the manner of presentation that the Secretary of Energy (or the appropriate delegated Department of Energy official) may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. In addition to the Secretary of Energy (or the appropriate delegated Department of Energy official), any meeting to carry out a voluntary agreement may be attended by the Attorney General, the Chairman of the Federal Trade Commission, the Secretary of Energy, or their delegates.

(5) Participants in any voluntary agreement or plan of action shall provide the Secretary of Energy (or the appropriate delegated Department of Energy official), the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action.

(6) Notwithstanding any other provision of this section, a meeting between a single participant and the Secretary of Energy (or the appropriate delegated Department of Energy official) solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Secretary of Energy (or the appropriate delegated Department of Energy official).

(d) *Maintenance of records.*

(1) The participants in any voluntary agreement or plan of action shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement or plan of action. The participants shall agree, in writing, to make available to the Attorney General, the Chairman of the Federal Trade Commission and the Secretary of Energy (or the appropriate delegated Department of Energy official) for inspection and copying at reasonable times and upon reasonable notice any item that this paragraph (d)(1) requires them to maintain.

(2) Any person required by § 821.4(d)(1) to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to § 821.6 of this part, and the reasons therefor. Any item made available to a Government official named in § 821.4.(d)(1) shall be available from that official for public inspection and copying subject to the limitations set forth in § 821.6 of this part.

§ 821.5 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after

consultation with the Chairman of the Federal Trade Commission and the Secretary of Energy (or the appropriate delegated Department of Energy official). The Secretary of Energy (or the appropriate delegated Department of Energy official) may also terminate or modify a voluntary agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate his participation in the agreement upon written notice to the Secretary of Energy. Effective immediately upon modification or termination of a voluntary agreement or plan of action, any antitrust immunity conferred upon the participants in that voluntary agreement or plan of action by section 708(j) of the Defense Production Act (DPA) of 1950 (50 U.S.C. 4558(j)) shall not apply to any act or omission occurring after the time of such termination or modification. termination or modification.

§ 821.6 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules, subject to the exemptions provided under 5 U.S.C. 552(b)(1), (3), or (4).

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The Secretary of Energy (or the appropriate delegated Department of Energy official) may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in 5 U.S.C. 552(b)(1), (3), or (4) or 5 U.S.C. 552b(c), as appropriate.

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