

DOE Responds to ANS 10 CFR 810 Rule Questions

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Editor's Note: The Department of Energy's Richard S. Goorevich answered questions posed by American Nuclear Society members to clarify details regarding the 10 CFR 810 rule: Assistance to Foreign Atomic Energy Activities, which goes into effect March 25, 2015.

1. What does the final rule achieve?

The final rule is intended to make a static regulation work in a flexible manner to meet the dynamic world of the commercial nuclear fuel-cycle and scientific pursuit of peaceful nuclear technology. Most importantly, the regulation is consistent with current global civil nuclear trade practices and nonproliferation norms, and updates the activities and technologies subject to the Secretary of Energy's specific authorization and DOE reporting requirements. In line with the President's export control reform initiative, the Department has moved from a list of countries requiring specific authorization to a list of generally authorized destinations, which are based principally on the U.S. agreements for civil nuclear cooperation (so-called Section 123 Agreements). The rule now has a more detailed scope section, expanded general authorization provisions, provides additional information on operational safety, and clarifies "deemed exports." In addition to the regulatory changes, the Department has undertaken a process improvement plan and is developing an electronic submission and tracking system, called e810. The regulation revision provided DOE with an opportunity to overhaul and improve the efficiency of the Part 810 authorization process in order to ease the regulatory burden by reducing uncertainty and timelines while maintaining the highest level of nonproliferation control.

2. Is it a simplification, a clarification, or designed to address a broader scope?

The final rule is a clarification based on years of input from stakeholders and an update to reflect the need to make the regulations consistent with current global civil nuclear trade practices and nonproliferation norms. Our intent was to make the 810 process part of the natural process of doing business or scientific collaboration, not an impediment.

3. 10 CFR 810 hasn't been updated since the Cold War. What was the driving force that got it started, and when did the process begin?

Approximately seven years ago, the Department recognized the need to update the rule for several reasons. One of the most important is the fact that the old list of specifically authorized countries was based on Cold War policies, contained countries that no longer existed, and countries that likely will never develop a civil nuclear program. In addition, after working under the regulatory framework for almost 30 years, DOE had experience

with implementation and years of input from stakeholders on where the rule lacked clarity, needed explanation and could benefit from being changed.

In addition, updates to the regulation help ensure that the part 810 nuclear export controls remain effective and efficient as the commercial nuclear market expands. This meant carefully determining destinations and activities that are generally authorized or subject to a specific authorization, and assuring that the determinations are consistent with current U.S. national security, diplomatic, and trade policy.

4. How would you say that the foreign policy landscape has changed since the last update, with regard to nuclear proliferation?

Following the discovery of the AQ Khan network in the early 2000s and the events of 9/11, it had become increasingly clear that a different approach to the protection of nuclear technology from non-state actors was necessary. The Nuclear Suppliers Group has made a number of significant changes to address these threats and as a founding member of the group, the U.S. Government needed to update its regulatory policies to keep pace.

In addition, the accident at Fukushima happened during the rulemaking process and we clearly saw the need to continue to ensure that the rule continues to support industry's ability to ensure nuclear power is safe and secure with emergency safety procedures. This is especially true as we look to a future carbon-free energy generation. As earlier referenced, energy security is part of the calculation of a country's national and economic security.

The challenge was to find the right balance between these different foreign policies.

5. The rulemaking went through two notices. How did the perspective of DOE NNSA change from 2011 to today?

It is the view of the Department that while this was a long process, the public comment period was essential to its success. The content of the final rule published this week was informed by the public comments received in response to both the Notice of Proposed Rulemaking and the Supplemental Notice of Proposed Rulemaking. Public comments were useful and highlighted where changes or clarifications needed to be made. The Department listened to the concerns expressed in these comments and worked with its sister Federal agencies to incorporate many of these comments.

Specifically three areas that changed based on public comments include:

1. The inclusion of destinations that have Project and Supply Agreements (PSA) under the U.S.-International Atomic Energy Agency (IAEA) 123 Agreement as generally authorized destinations. Mexico and Chile are the two countries that have such PSAs in place that are recognized in the rule.

2. The addition of a general authorization provision for foreign nationals from restricted destinations that have been awarded Unescorted Access at NRC licensed facilities. The NRC's regulatory requirements to authorize unescorted access are sufficient for DOE to allow those workers to be considered generally authorized thereby not imposing a double authorization requirement.
 3. Retention and expansion of the general authorization for Operational Safety. Public comments made clear the importance of this provision to support its proposal in the supplemental notice and inclusion in the final rule.
6. **Bilateral agreements under Section 123 of the Atomic Energy Act and Authorizations under Section 57b of the AEA through 10 CFR 810 seem to achieve similar ends. How would you guide someone to navigate the landscape necessary to open up nuclear technology trade with a new country? Are both agreements needed, or can one suffice to enable business to export US products and services?**

123 Agreements and Part 810 regulations may work in concert, but one is not required for the other. The United States has a unique regulatory structure; an agreement for civil nuclear cooperation is not required in order for U.S. industry to be able to provide technology and assistance outside the United States. 123 Agreements allow the NRC to license the export of materials, equipment and components to foreign destinations, whereas Part 810 controls technology and assistance only.

Specific Authorizations (SA) under Part 810 often are the starting point for a destination considering a civil nuclear power program. SAs can be used to help a destination determine what technology might best suit their needs, as well as laying the framework for a regulatory regime to provide oversight of both the indigenous nuclear technology as well as the necessary controls for prevention of proliferation activities.

Once a destination has adequate public support and financing for a civil nuclear program and has established nonproliferation credentials, in part through their Part 810 SAs, the destination may make the decision that it is worthwhile to enter into a 123 Agreement with the United States. It is in the interest of the United States to enter into 123 Agreements with destinations that have these nonproliferation credentials in order to spread our nonproliferation, safety programs, and quality approaches which are the industry standard.

Richard S. Goorevich is the Director of the Office of International Regimes and Agreements in the U.S. Department of Energy's National Nuclear Security Agency. His office is responsible for providing technical guidance to the USG on international nuclear affairs, nuclear safeguards, nuclear and WMD Dual-Use export control policies, and international physical protection requirements. His office is also responsible for the issuing of US export authorizations for nuclear assistance, commonly referred to as "810 authorizations."

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