Proposed Changes to DOE Part 810

Assistance to Foreign Nuclear Activities

National Nuclear Security Administration

Office of Nonproliferation and International Security (NIS)

- **Safeguard and Secure** nuclear material to prevent its diversion, theft and sabotage.
- **Control** the spread of WMD-related material, equipment, technology and expertise.
- Negotiate, monitor and **verify** compliance with international nonproliferation and arms control treaties and agreements.
- Develop and implement DOE/NNSA nonproliferation and arms control **policy** to reduce the risk of weapons of mass destruction.

Office of Nonproliferation and International Security (NIS)

Outline

- **Department of Energy, National Nuclear Security Administration**

  Mr. Richard Goorevich
- Department of State

  Mr. Richard J. K. Stratford
- Nuclear Regulatory Commission

  Ms. Brooke Smith, Mr. Mark Resner
- Department of Commerce

  Mr. Steven Clagett

Scope of Part 810

- Part 810 implements Sec. 57 b. of the Atomic Energy Act (AEA)
- Sec. 57 b. Unlawful for any person to directly or indirectly engage in the production of any special nuclear material [SNM] outside of the United States except:
  - Upon authorization by the Secretary of Energy after a determination that such activity **will not be inimical** to the interest of the United States.
- Covers SNM activities whether for weapons *or* commercial purpose

Inimicality determination is key

Scope of Part 810

- Part 810 classifies assistance as:
  - **Exempt** (§810.2) – in scope of §57 b. but regulation unnecessary
  - "**Generally Authorized**" (§810.6) – broad categories of assistance that are not inimical and do not require specific approval
  - Requiring a **Specific Authorization** (§810.7) and inimicality determination by the Secretary

Part 810 establishes pathways to authorization

General and Specific Authorizations

- Assistance requiring specific authorization means:
  - Preparation of application
  - DOE and Interagency review
  - Host country assurances on proliferation compliance
  - Transaction-specific finding by Secretary on inimicality
- Generally authorized assistance
  - Requires reporting only
  - Available for most foreign nuclear transactions

General authorizations make regulation efficient: Higher walls only for riskier transactions

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Part 810 Changes were Needed

- No comprehensive update since 1986
- Global nuclear market has expanded and changed
  - New markets, particularly in Asia, the Middle East, and Eastern Europe
  - New vendors competing with U.S. companies
  - New technologies for reactors and fuel cycles
  - New multi-national business arrangements
- Global market dynamics =
  - New proliferation threats
  - New political relationships
  - New regulations

Fundamental Approach Unchanged

- The Secretary has discretion to make general authorization or require specific authorization based on inimicality finding
- Inimicality determination factors (§810.9) include:
  - U.S. relationship to **host country**
    - National security considerations
    - Diplomatic considerations
    - Trade considerations
  - Sensitivity of **technology** – enrichment and reprocessing always require specific authorization
- Inimicality well supported if:
  - POTUS 123 agreement decision
  - Congress 123 oversight
  - Nuclear Proliferation Assessment Statements (NPAS)

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Goals of Proposed Changes

- **Effective Threat Reduction**. Maintain effective controls in the face of changing nuclear geopolitics, economics, technologies and relationships since 1986
- **Effective Nuclear Trade Support**. Support U.S. companies competing to provide nuclear technology for peaceful purposes in global civil nuclear reactor markets
- **Efficient Regulation**. Create a licensing process that is efficient, transparent, timely, and predictable. The cost of regulation should not exceed the benefits. Avoid duplicative or unnecessary regulatory requirements

Striking a balance to promote trade without increasing proliferation risk

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DOE Proposed Regulations

- Initial notice of proposed rulemaking (NOPR)
  - September 2011
  - Meant to address concerns about outdated regulations
    - Outdated inimicality determinations
    - Outdated terminology
  - Provoked considerable adverse public comments
- Supplemental notice of proposed rulemaking (SNOPR)
  - Comments carefully considered
  - Proposed regulations revised in response
  - Proposed regulations prepared in consultation with interested agencies

SNOPR regulations responsive to comments

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What We Learned from Comments

- Leading Concerns
  - Proposed change to generally authorized country list from restricted country list
  - Perceived increase in proposed activities subject to specific authorization
  - Applicability unclear regarding some activities
- Specific authorization process slow, opaque and unpredictable
- Explanations not clear

Process concerns appeared to drive concerns about substance

How the SNOPR Responds to Comments

- More open, better explanation of proposed changes
- Proposed destination reclassification retained with minor changes – minimal adverse trade impact
- Proposed to generally authorize or exempt more activities
- Improve process

Process improvement is key to better regulation

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Key Proposed Change: Destination Classification

- Current regulation identifies destinations requiring specific authorization, others generally authorized
- Proposed regulation identifies generally authorized destinations, others would require specific authorization
- No change proposed for 117 destinations
  - 44 major nuclear trading partners would remain generally authorized
  - 73 destinations presenting proliferation issues would continue to require specific authorization
  - Russia, China, and India would continue to require specific authorization
  - Certain projects in Mexico and Chile would continue to be authorized

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Classification Change Proposed for 80 Destinations

- Key basis for proposed classification: 123 Agreement
- Kazakhstan, Ukraine, UAE would be generally authorized
  - 123 Agreements in place
  - Countries have dynamic nuclear markets
- Specific authorization would be required for 77 countries with:
  - Little or no nuclear trade
  - No 123 Agreement
  - No experience managing proliferation issues

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Future Reclassifications

- As nuclear programs emerge in countries requiring specific authorization, and would benefit from U.S. nuclear partnership, host countries may enter 123 Agreements
- 123 Agreements support inimicality determination
- Generally authorized status may be granted upon inimicality determination

Proposed classifications facilitate trade with growing markets, would have little impact on smaller nuclear markets

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Key Proposed Change: Deemed Exports

- SNOPR exempts lawful permanent residents and protected foreign nationals
- SNOPR generally authorizes access to nuclear technology to foreign nationals employed at U.S. nuclear facilities if:
  - Employee signs confidentiality agreement;
  - Access is authorized in accordance with NRC standards; and
  - Employer reports authorized access to DOE
- Would cut delays, and duplicative regulation
- No changes are proposed for deemed re-exports

Would benefit U.S. Nuclear employers

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Key Proposed Change: Commercial Power Reactor Support

- Existing rule expressly covers "production" reactors but covers all reactors because:
  - All reactors produce SNM and can be operated to maximize SNM output
  - Part 810 has always been applied to all reactor technology
- SNOPR expressly covers all reactors, but narrows scope to reactor technology related to SNM production (nuclear island, primary coolant)
- Consistent with NRC and Commerce coverage

SNOPR clarifies scope nexus to §57 b.

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Key Proposed Change: Operational Safety

- Existing rule provides "fast track" authorization for operational safety and nuclear emergency assistance
- NOPR eliminated operational safety fast track
- SNOPR would:
  - retain fast track
  - tie definition of "operational safety" to established safety standards
  - authorize safety exchange and benchmarking programs
  - Extend DOE period to respond to request for fast track approval from 30 days to 45 days , but if no response in 45 days automatically generally authorized

SNOPR promotes U.S. nuclear safety engagement

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Other Proposed Changes

- Commerce and State approved exports would be exempt from part 810 in order to avoid duplicative regulation
- Transfer of Public Information would be generally authorized. SNOPR proposes standardized definition and would make transfers exempt
- Activities with remote connection to SNM would be authorized or not covered: mining, medical isotope production, fusion, and back-end
- Activities carried out by IAEA personnel would be generally authorized except for employees from restricted countries working on sensitive technology

Unnecessary regulatory burdens would be reduced

Part 810 Process Issues

- Specific authorization process unduly protracted
- Processing delays may put U.S. suppliers at a competitive disadvantage in other countries
- Processes should be more transparent, predictable, and efficient

Reduce Process Times

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Current Specific Authorization Process

Stage I Initial Review

NA-24: Analysis and recommendation

~2 days

Reviews

* NNSA Staff
* DOE Nuclear Energy
* Legal

Send approval recommendation to interagency for review

<30 days

Minimal time reduction opportunity

Stage II Agency Review

- Interagency review
- State, Commerce, NRC and DoD
- **<30 days**
- State requests formal assurances from host government
- Assurances received
- **1-24+ months**

Major time reduction opportunity

Stage III Approval

- NA-24 draft license approval recommendation
- **~2 days**
- Review: NNSA staff, DOE NE and other staff Legal
- Secretary approval
- Issue license
- **30+ days**

Some reduction opportunity

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Part 810 Process Improvements

- DOE
  - Committed to process improvement program
  - Goal is to make process ISO 9001 compliant
  - “Talk to customer” interviews
- Ideas on the table include:
  - Publish Part 810 guide including advisory opinions
  - Reduce the response times for foreign government assurances
  - Develop and implement an e-licensing system
  - Create fast track procedures for authorization of activities that present the lowest proliferation risk.
  - Reduce time for internal DOE and inter-agency reviews

Conclusion

Improving Part 810

- Facilitate nuclear trade
- Update and modernize to be more open, effective and efficient
- No compromise of proliferation controls

Striking a balance to promote trade without increasing proliferation risk

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Office of Nonproliferation and International Security (NIS)

Department of State Office of Nuclear Energy, Safety and Security (NESS)

- NESS develops U.S. policy related to peaceful nuclear cooperation, nuclear safety, nuclear export controls, and the physical protection of nuclear materials and facilities
  - USG Lead on Nuclear Suppliers Group
  - Lead for 123 Agreements Negotiations
  - Responsible for concurring in Part 810 authorizations, include responsibility for obtaining foreign government assurances

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Department of State's Role in Part 810s

- The 1954 Atomic Energy Act (AEA) requires DOE to seek concurrence from the Department of State (DOS) for approval of specific authorizations of nuclear technology transfers
  - Prompt and careful consideration for each application
  - Make every effort to expedite internal review process
  - Foreign government nonproliferation assurances are required

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Foreign Government Assurances

- Foreign government nonproliferation assurances are required in accordance with long-standing U.S. policy and U.S. obligations to adhere to the provisions of the multilateral Nuclear Suppliers Guidelines:
  - Nuclear technology transfers are only for civil nuclear power use and not for nuclear weapons, other explosive devices, or for any military purpose; and
  - No retransfer without prior written consent of US government
- Proactive facilitation, coordination, and engagement with DOE, U.S. Embassies, and foreign governments

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Why China, India and Russia are not proposed to be Generally Authorized?

- Nuclear transfers to China, India and Russia would require specific authorization based upon long-standing U.S. diplomatic and national security policy
- Reporting requirements in the Hyde Act make it infeasible to grant India generally authorized status
- Pursuing new approaches to expedite issuing of assurances, given U.S. company expansion and involvement in large civil nuclear programs abroad, i.e. China
  - Obtaining agreement from recipient governments to apply existing assurances to new nuclear projects

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Guiding Principles

- Recognizes critical importance of nuclear technology transfers to the U.S. nuclear industry
- Strongly supports need to balance nonproliferation controls, transparency and greater supplier responsibility without hindering legitimate trade and international cooperation on peaceful uses of nuclear energy
- DOS works to ensure expeditious processing of nuclear technology transfers while protecting the common defense and security

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United States Nuclear Regulatory Commission

Protecting People and the Environment

NRC Export Controls and Site Access Requirements

Brooke G. Smith
Senior International Policy Analyst
Office of International Programs

Mark Resner
Senior Security Specialist
Office of Nuclear Security and Incident Response

August 5, 2013

Legal Basis

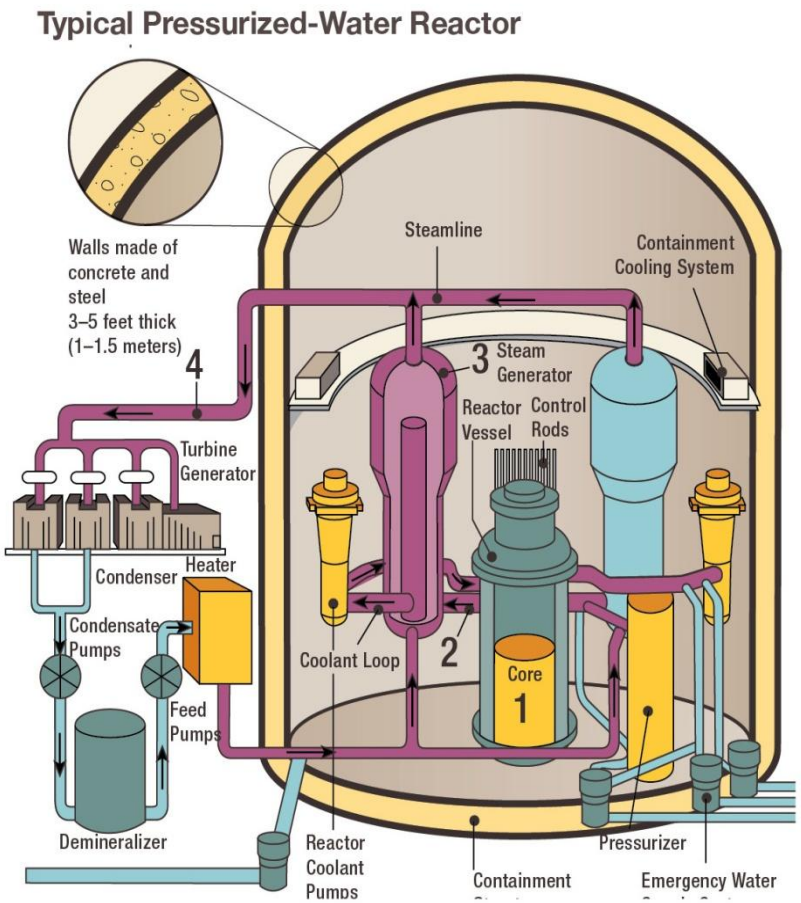
- Atomic Energy Act of 1954
- Nuclear Non-Proliferation Act of 1978
- Treaties, Conventions and Agreements including:
  - Nuclear Non-Proliferation Treaty
  - International Atomic Energy Agency (IAEA) Safeguards
  - Conventions: Nuclear Safety; Waste and Spent Fuel; Physical Protection; Early Notification; Assistance; and Liability
  - 123 Agreements for peaceful nuclear cooperation

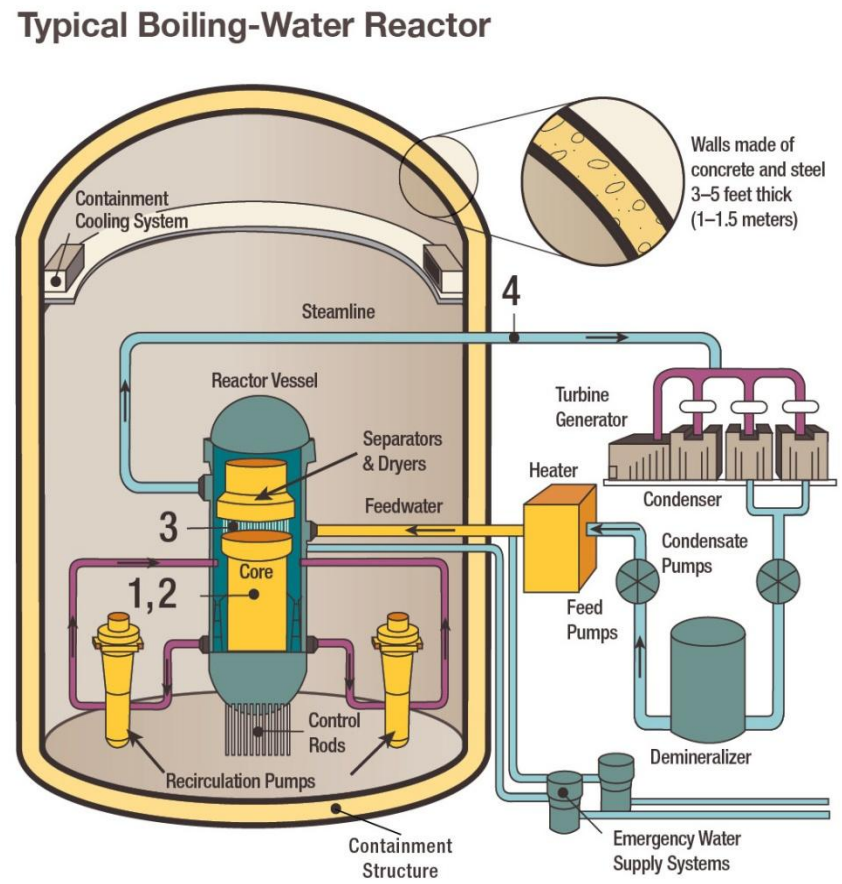
NRC Jurisdiction

- Exports: reactors; fuel cycle facilities; components; nuclear grade graphite for nuclear end use; deuterium; source, special nuclear and byproduct materials including when contained in spent fuel or radioactive waste

- Imports: reactors; fuel cycle facilities; source, special nuclear and byproduct materials including when contained in spent fuel or radioactive waste

Nuclear Reactors & Especially Designed or Prepared Equipment





Part 110 Appendix A
Illustrative List of Reactor Equipment

- Items within or attached directly to the reactor vessel
- Equipment which controls the level of power in the core
- Components which normally contain or come in direct with or control the primary coolant of the reactor core

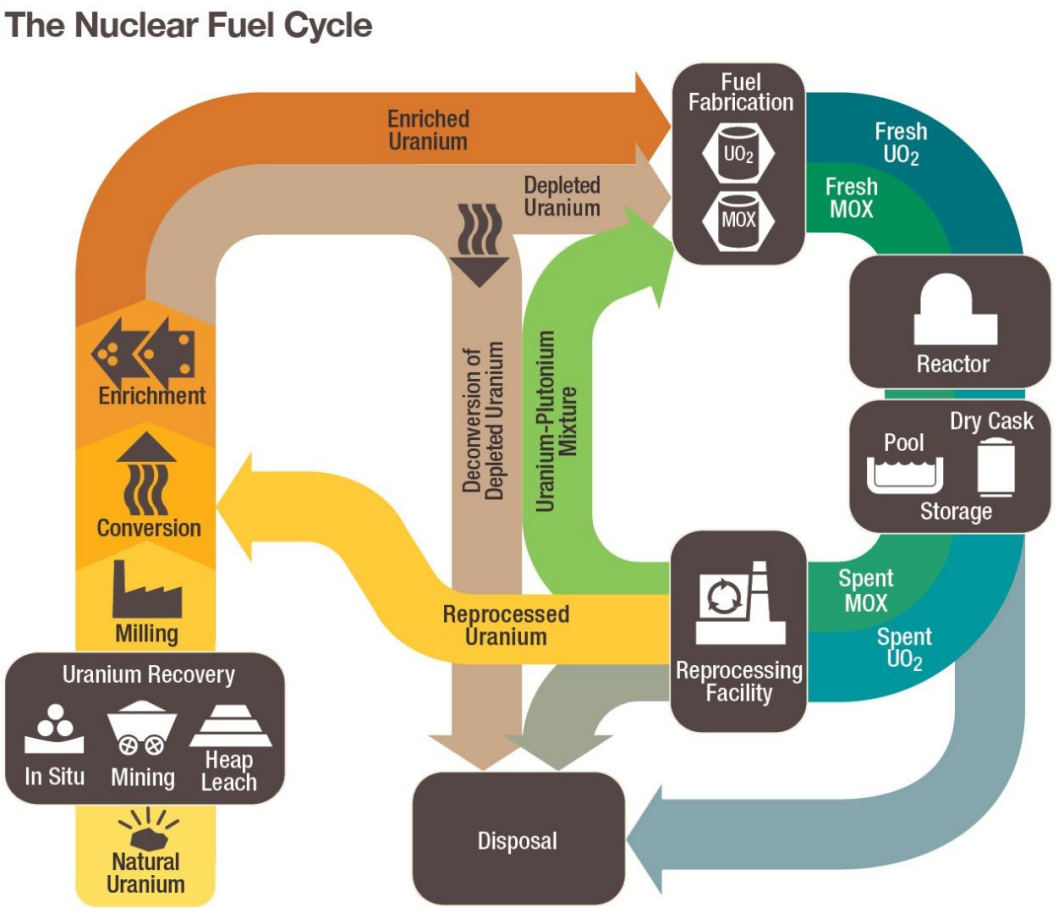
Part 110 Appendix A "Major" Reactor Equipment

- Reactor pressure vessels, i.e., metal vessels, as complete units or major shop-fabricated parts
- On-line reactor fuel charging and discharging machines
- Complete control rod drive system
- Reactor primary coolant pumps

Part 110 Appendix A
"Minor" Reactor Equipment

- Reactor pressure tubes, i.e., tubes especially designed or prepared to contain fuel elements and the primary coolant
- Zirconium tubes
- Reactor internals, .e.g., core support structures, control and rod guide tubes, thermal shields, baffles, core grid plates and diffuser plates
- Reactor control rod drive mechanisms, including detection and measuring equipment to determine flux levels
- Any other components especially designed or prepared for use in a nuclear reactor or in any of the components described

Fuel Cycle Facilities & Especially Designed or Prepared Components



Illustrative Lists in Part 110 Appendices

- Appendix B – Gas Centrifuge Enrichment
- Appendix C – Gaseous Diffusion Enrichment
- Appendix D – Aerodynamic Enrichment
- Appendix E – Chemical or Ion Exchange Enrichment
- Appendix F – Laser-Based Enrichment
- Appendix G – Plasma Separation Enrichment
- Appendix H – Electromagnetic Enrichment
- Appendix I – Reprocessing
- Appendix J – Uranium Conversion
- Appendix K – Plants for the Production of Heavy Water, Deuterium and Deuterium Compounds
- Appendix N – Lithium Isotope Separation; Appendix O – Fuel Fabrication

Radioactive Materials

- In 2005, Part 110 was amended to address the IAEA Code of Conduct on the Safety and Security of Radioactive Sources and its Import/ Export Guidance
- If a device or a source for use in a device contains Appendix P radionuclides (Am-241, Am-241/Be, Cf-252, Cm-244, Co-60, Cs-137, Gd-153, Ir-192, Pu-238, Pu-239/Be, Pm-147, Ra-226, Se-75, Sr-90, Tm-170 or Yb-169) a specific NRC export license may be required

Part 810 – NRC's Consultative Role

- "…any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State after consultation with the Nuclear Regulatory Commission…"
- NRC, with rare exceptions, provides its input within 30 days of receiving a request for views
- Collaborative process
  - NRC works closely with DOE throughout the review process

NRC's Site Access Requirements

- 10 CFR 810.6(b) of SNOPR – Transfer of technology to a citizen or national of a country or territory not listed in the Appendix to Part 810 and working at an NRC-licensed facility

Questions

To contact the NRC
Office of International Programs

301-415-1780

THANK YOU!!!

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301-415-2347
Brooke.Smith@nrc.gov

NRC's Access Authorization Program for Nuclear Power Plants

August 5, 2013

Mark Resner
Access Authorization Program Coordinator
Office of Nuclear Security & Incident Response

U.S.NRC
United States Nuclear Regulatory Commission
Protecting People and the Environment

Introduction

Nuclear power plants licensed by the Nuclear Regulatory Commission (NRC) are required by regulations codified in Title 10 *Code of Federal Regulations (CFR)* to provide an access authorization program that provides high assurance that individuals are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

Defense-In-Depth Strategy

- NRC uses a layered, defense-in-depth approach that incorporates three primary rings of protection at nuclear power plants
  - The outer ring is the owner controlled area (OCA)
  - Proceeding inward, the next ring is the protected area (PA)
  - The vital area (VA) is the inner most ring
  - The OCA, PA, and VA, have progressively more stringent requirements as you proceed into the nuclear plant from the OCA to the VA
- In addition to physical security, other components of Access Authorization include Behavioral Observation, Fitness-for-Duty, and Insider Mitigation

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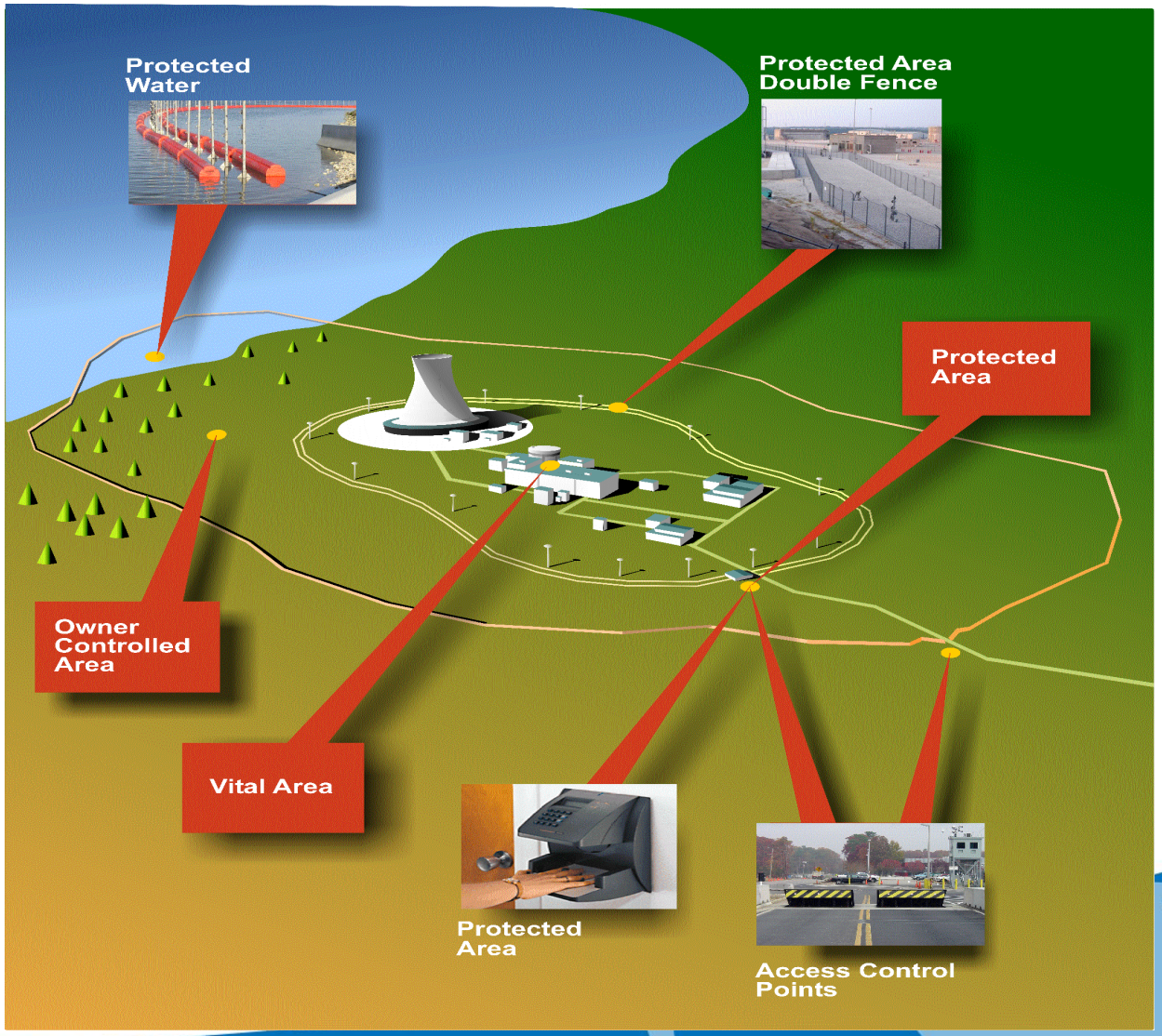


Types of Access

- **Unescorted Access (UA)**
  - Licensees may grant unescorted access if all required program elements are met
- **Unescorted Access Authorization (UAA)**
  - Licensees may grant UAA only for access to Safeguards Information as opposed to plant access
- **Escorted Access**
  - Licensees may grant escorted access to protected and vital areas with a trained escort if the required criteria are met

Elements Requried for Initial Access Authorization

Unescorted	Escorted
Consent and Advisement	Procedures for processing, controlling, and escorting visitors
Personal History Questionnaire	Visitor control register
Verification of True Identity	Confirmation of visitor's identity
Employment History Evaluation	Verify any prior denials of access
Credit History	Visitor badges
Character and Reputation Evaluation	Escort Training
Criminal History Review	Communication with security staff
Psychological Assessment	Escort should be knowledgeable of any work the individual may perform

Elements Required for Reinstatement of Unescorted Access Authorization

Within 365 days	Within 30 days
Consent and Advisement	Consent and Advisement
Personal History Questionnaire	Personal History Questionnaire
Verification of True Identity	Verification of True Identity
Employment History Evaluation	

NRC Regulations

U.S.NRC
United States Nuclear Regulatory Commission
Protecting People and the Environment

Access Authorization regulations are codified in:

<u>10 CFR 73.55</u> " Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage"

<u>10 CFR 73.56</u> "Personnel access authorization requirements for nuclear power plants"

<u>10 CFR 73.57</u> "Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees"

<u>10 CFR 26</u> "Fitness for Duty Programs"

Recent Enhancements to the Regulations

- Licensees required to implement enhancements by March 31, 2010.
  - Enhancements to the psychological assessments requirements
  - Requires information sharing between reactor licensees
  - Expanded behavioral observation requirements
  - Requirements for reinvestigations of criminal and credit history records for all individuals with unescorted access
  - 5-year psychological reassessments for certain critical job functions

NRC Guidance

<u>Regulatory Guide 5.66</u> "Personnel Access Authorization for Nuclear Power Plants"

<u>Regulatory Guide 5.77</u> "Insider Mitigation Program"

• Minimum IMP elements for all personnel with UA to the protected and vital areas of a nuclear power plant:

(1) a security determination (clearance or access authorization)

(2) initial and random substance abuse testing

(3) psychological assessments which may include a medical evaluation

(4) review by the immediate supervisor at least annually

(5) periodic reinvestigation security determinations

Industry Guidance

- **NEI 03-01 (Nuclear Power Plant Access Authorization Program)**
  - Prepared by the Nuclear Energy Institute (NEI) in coordination with the industry
  - Endorsed by the NRC
  - Access authorization guidance in NEI 03-01 is committed to and implemented by NRC licensees in their site physical security plans that must be approved by the NRC
  - NEI 03-01 and physical security plans are updated as new requirements emerge

Industry Guidance
(continued)

NEI 03-04 (Guideline for Plant Access Training)

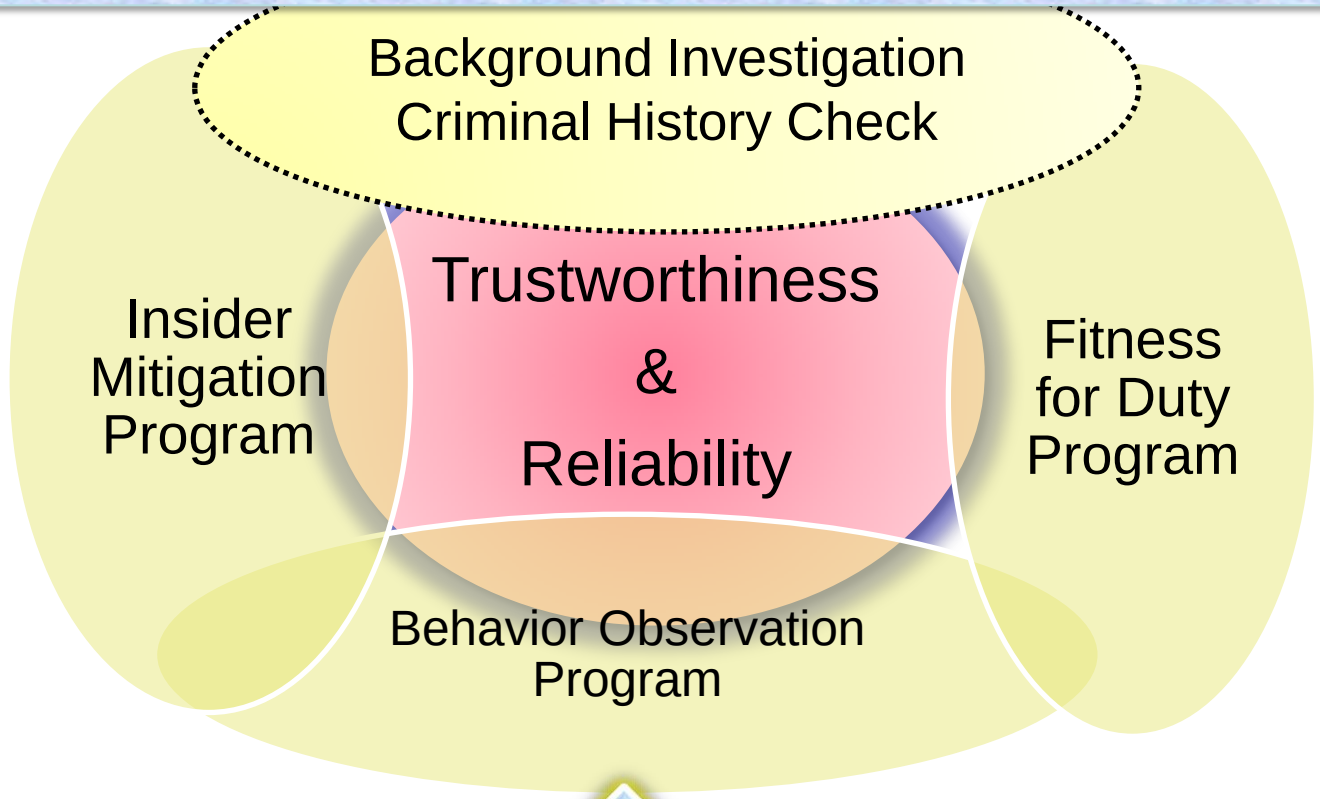
- Pre-access training with a score of at least 80% on the exam required before unescorted access can be granted

- The Behavior Observation Program (BOP) is covered in this guidance
    1. BOP is currently being updated to incorporate behavior indicators associated with radicalization

Integration of Insider Mitigation, Fitness-for-Duty, & Behavior Observation Programs

Insider Mitigation	Fitness-for-Duty	Behavior Observation
Prevention	Pre-access drug & alcohol	Continuing assessment of reliability & trustworthiness
Detection	Inclusion in random drug testing pool	Detection of illegal use of drugs, alcohol, aberrant behavior, and fatigue
Denial	Self-disclosure	Training for all individuals with unescorted access & annual supervisory reviews

Integration of Human Reliability Components



NRC Inspection & Oversight

Other Program Elements of Access Authorization

- **NRC Data Demographic Project**
  - Implemented in August 2002 and memorialized in a January 2006 MOU between NRC and the Terrorist Screening Center (TSC)
  - Data set of biographic information from PADS includes data for all individuals entered into PADS by the NRC licensee
    - All new individuals granted initial UA
    - All individuals with current UA status

Other Program Elements of Access Authorization
(continued)

- **NRC Data Demographic Project (continued)**
  - All individuals who are eligible for UAA
  - All individuals who have been reinstated with UA within 30 days or less, or within 31-365 days
  - The frequency of providing the data to TSC is monthly with a 12-month retrospective look

Enhancement Initiatives With Federal Partners

U.S.NRC
United States Nuclear Regulatory Commission
Protecting People and the Environment

•Engaged with FBI CJIS Interoperability Unit, US Visitor and Immigrant Status Indicator Technology (US VISIT), and DoD Biometrics Identity Management Agency (BIMA)

•Goal is to participate in pilot program for rap back feature and acquire ability to screen licensee fingerprints through CJIS, IDENT & BIMA databases as part of the Access Authorization Program

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Bureau of Industry and Security
U.S. Department of Commerce

DOC Export Controls and Civil Nuclear Trade

By Steven B. Clagett

Agency Jurisdiction

Process	Agency	Jurisdiction	Advisory Agencies
Part 810	Department of Energy	Nuclear technology and services related to the production of Special Nuclear Material	Departments of Commerce, Defense, State, and the NRC
Part 110	Nuclear Regulatory Commission (NRC)	Nuclear equipment and material	Departments of Commerce, Defense, State, and Energy
Export Administration Regulations	Department of Commerce	Dual-use items listed on the Commerce Control List	Departments of Defense, Energy, and State

Commerce Jurisdiction
(nuclear power related items)

- Balance of plant – turbines, generators, switching gear, pipes and valves
- Health and safety equipment – radiation detection and monitoring, fire safety, facility security
- General infrastructure, telecommunications, tools and maintenance equipment
- Materials and Manufacturing Equipment

Commerce Jurisdiction
(NSG dual-use items)

Pressure Transducers (2B230) – Used for pressure measurement in a multitude of industrial processes as well as in the uranium hexafluoride gas in the centrifuge process for isotope separation

Mass Spectrometers (3A233) – Determine composition of chemical samples as well as the chemical make-up of uranium, plutonium, etc

Machine Tools (2B001) – Product manufacturing in virtually every industry including nuclear explosive device components and uranium enrichment equipment

List Based Controls

- Export Control Classification Number (ECCN):
  2B231
- Vacuum pumps having all of the following characteristics.
  - Input throat size equal to or greater than 380 mm
  - Pumping speed equal to or greater than 15 m^3/s
  - Capable of producing an ultimate vacuum better than 13.3 mPa
- Reason for Control
  Nuclear Nonproliferation **(NP1)**, Anti-terrorism **(AT 1)**

Nuclear End-Use Controls

- **Section 744.2 (Catch-All/EPCI)**
- License required if the item will be used directly or indirectly in any of the following:
  - Nuclear explosive activities
  - Unsafeguarded nuclear activities
  - The following activities, whether safeguarded or unsafeguarded:
    - Facilities for the chemical processing of irradiated special nuclear or source material
    - Facilities for the production of heavy water
    - Facilities for the separation of isotopes of source and special nuclear material
    - Facilities for the fabrication of nuclear reactor fuel containing plutonium

Not Subject to 744.2 Controls

- Mining and Milling
- Fusion Reactors (Tokamak and Iter)
- Most Trade with IAEA Safeguarded Facilities

End-Use/End–User Based Controls

Recently, we received an export inquiry for stainless steel pipe for use in a nuclear power plant in PRC.

Do I need to apply for a license under Part 744.2 of the EAR?

End-Use/End-User Based Controls

I am a distributor of college textbooks. I often get requests for foreign customers for textbooks on nuclear engineering.

Should I be worried about Part 744 controls?

Entity List

- The Entity List notifies exporters of requirements for exports/re-exports to specified end users
- See Supplement Number 4 to part 744 of the EAR

COUNTRY	ENTITY	LICENSE REQUIREMENT	LICENSE REVIEW POLICY	FEDERAL REGISTER CITATION
RUSSIA	All-Russian Scientific Research Institute of Technical Physics (VNIITF), a.k.a., the following eight aliases: -Vserossiyskiy Nauchno-Issledovatelskiy Institut Tekhnicheskoy Fiziki; -Russian Federal Nuclear Center-VNIITF (RFNC-VNIITF); -Kasli Nuclear Weapons Development Center; -Institute of Technical Physics; -Zababakhin Institute; -ARITP (All Russian Institute for Technical Physics); -Federal State Unitary Enterprise Russian Federal Nuclear Center - Academician E.I. Zababkhin All-Russian Scientific Research Institute of Technical Physics (FGUPRFYaTs-VNIITF)	For all items subject to the EAR.	Case-by-case basis.	62 FR 35334, 6/30/97 66 FR 24267, 5/14/01 75 FR 78883, 12/17/10. 76 FR 29998, 05/24/11.

Deemed Export Rule

- The obligation to get a license before releasing controlled technology or source code to a foreign person is informally referred as the "deemed export" rule
- Releases of controlled technology or source code to foreign persons in the U.S. are "deemed" to be an export to the person's country or countries of nationality

Nationality

- Commerce Department looks to a foreign person's most recent country of citizenship or permanent resident
- Exempted from the Deemed Export Rule
  - A person granted U.S. citizenship
  - A person granted permanent residence status (i.e. " Green Card" holders)
  - A person granted status as a "protected individual" under 8 U.S.C. 1324b(a)(3)

Part 6 of Form I-129: Export Certification Requirement

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See **Page 3** of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

☐ 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

☐ 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

Deemed Exports and I-129 – How much of an issue?

- What if I am a nuclear power plant operator?
- What if I am a valve manufacturer?
- Are Chinese or Indian nationals possible?

Licensing Deadlines

QUESTIONS ?

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