

Frequently Asked Questions

What are the biggest changes in the new Part 810 rule?

The biggest change, most importantly, is that the regulation is now consistent with current global civil nuclear trade practices and nonproliferation norms, and it 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 United States agreements for civil nuclear cooperation (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". Anyone seeking more detailed explanations should refer to the Supplementary Proposed Rulemaking and the Final Notice of Rulemaking published in the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-23/pdf/2015-03479.pdf>.

How do I know if Part 810 applies to me?

Part 810 may apply to any person, (as defined in section 810.3 of the rule) subject to the jurisdiction of the United States, who is planning to transfer technology or assistance related to:

- commercial nuclear technology; OR
- a U.S. company that has nuclear technology AND employs foreign nationals who require access to the technology.

If a person meets the above criteria, consult the specific provisions of the rule to determine if it is applicable to the relevant activity.

What do I do if I have a specific authorization for a country that is now a generally authorized destination?

Any U.S. person that has a specific authorization in force for an activity that is captured by Part 810.8(a) of the previous version of the rule, but now no longer requires a specific authorization, should file a final report with DOE. The specific authorization file will be closed. Please keep in mind that any specific authorization issued under 810.(b) or (c) is not based on the end user destination and likely will require a specific authorization under the current rule. Reporting requirements for generally authorized destinations will apply as long as the subject matter activity continues.

Where do I file a report as required by Part 810 with DOE?

United States Department of Energy
National Nuclear Security Administration
Washington, DC 20585

Attn: Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC)

What do I do if I have an ongoing activity that I previously reported under as a generally authorized activity under Part 810.13 for a country that now requires a specific authorization?

If a company has up to date general authorization reporting on file with DOE for an activity in a destination that now requires a specific authorization, that company should take the following actions to ensure there is no disruption in activities: The company should file a request for authorization to continue the activity with DOE within 180 days after entry into force of the new rule. The authorization application should include copies of the previous reporting, a description of the activity, and the anticipated length of activity. DOE will determine whether the activity can continue as grandfathered in under the previous general authorization or a new specific authorization must be requested. A record of part 810-controlled generally authorized technology transfers to these employees is necessary for DOE to adequately monitor these transfers. Companies that have made unreported generally authorized transfers should provide the information required by § 810.11 of the final rule for each transfer to any foreign national who continues to have access to part 810-controlled technology by August 24, 2015.

What do I do if I did not previously report an activity under 810.13 that is ongoing and now requires a specific authorization?

If a company has an activity that required reporting under the 810.7 general authorization provisions but was not reported, that company should file a request for specific authorization, which should include reporting on past activities, within the 180 day entry into force period. DOE will review and respond to the request. Until such time as DOE acts, the activity may continue unless DOE specifically tells the company otherwise.

What if I want a determination regarding whether an activity is within the scope of Part 810?

A company should review the detailed scope statement to determine whether an activity falls within the scope of the regulation. A company may request a policy determination from DOE, which can take 30 days. A company may also seek a legally binding view from the General Counsel of the Department of Energy.

Is commercial nuclear reactor technology under the scope of Part 810 controls?

Yes, commercial nuclear reactor technology falls within the scope of Part 810 because as a byproduct of energy generation, plutonium is produced in spent nuclear fuel.

Can I submit items electronically? Do I need to send a hard copy?

The Department is in the process of developing an e810 system that will serve as an electronic portal for submission of Part 810 reports and applications. The anticipated deployment date will be in Q3 of the 2015 calendar year. Until the system is deployed companies must submit hard copies and ensure that a courtesy copy has been sent to Part810@nnsa.doe.gov .

What is the procedure for getting approval for emergency activities authorized under 810.6(c)(1)?

In case of a radiological emergency where technology covered by Part 810 is required imminently, the company wishing to transfer that technology should call (202) 586-1007 and should DOE agree that the transfer is needed; DOE will provide verbal notification of approval and make arrangements for follow-on reporting and responsibilities.

What is the procedure for getting approval for generally authorized activities for the Ukraine?

A company wishing to transfer technology or assistance must provide DOE with ten (10) days advance notice of that transfer. Should DOE, in consultation with the State Department, determine that the Secretary would be unable to make a non-inimicality determination, the Secretary may invoke the authority in § 810.10 (c). Thus, that transfer would not be considered generally authorized and the applicant would need to file a request for specific authorization in accordance with §§ 810.7 and 11 requiring the full interagency review.

What is a deemed export?

The export of controlled technical information to a foreign country is deemed to have taken place when technology is disclosed to a foreign national of that country, located anywhere. Thus, for example, the disclosure of nuclear reactor technology to a Chinese citizen in the United States is deemed to be an export to China for purposes of the rule.

The rule was published-when are the changes in force? How long do I have to come into compliance?

The rule was published on February 23, 2015 and the effective date is March 25, 2015. Companies have 180 days after the publication to come into full compliance with the changes in the regulation.

I have a large number of foreign nationals working in the United States from countries that were previously generally authorized but now require specific authorization. How do I make sure that I maintain human capital as we transition into the new requirements for compliance?

Companies have 180 days to submit reports and/or new requests for specific authorization after the publication of the new rule. During that 180 day period, companies are encouraged to

conduct a review of employment records to identify employees that may be affected by the change in the categorization based on their country of citizenship. Those individuals' positions should be reviewed by subject matter experts to identify whether the subject matter or technology accessed falls within the scope of Part 810.

The Department will not require companies to take any immediate action on legacy employees while applications are under review or in process. This will not extend to new hires.

I have a large number of employees that have received Unescorted Access (UA) at an NRC licensed facility. Are they generally authorized? What are my reporting requirements? Do I need to notify the Department when they no longer have UA?

Foreign nationals with UA at a NRC licensed facility are generally authorized under Part 810.6(b). A company needs to submit a report to the Department which includes all the information outlined in 810.12.

Companies have a responsibility to notify the Department when UA is canceled, expires, or is revoked for a foreign national from a country that requires specific authorization.

Is employment the trigger for the deemed export rule or is it only for transfers of technology under the scope of Part 810?

No. The mere employment of a foreign national from a country not listed on Appendix A does not trigger a requirement for authorization under Part 810. Part 810 regulates the transfer of technology, information, and assistance that is controlled under Part 810 and thus the employer must have the need to transfer the technology, assistance, or information to that employee in order to trigger Part 810 requirements.

How do I make a self-disclosure?

A company that becomes aware of a transfer that violates the Part 810 regulation must notify the Department in writing within 30 days of becoming aware of that violation. The notification should include all relevant information surrounding the violation, any actions the company has taken to remedy the situation, and any steps the company has taken to ensure the same type of violation will not take place again. DOE will evaluate the information provided and respond in writing.

How will I know if I have filed reports under 810.6(a)(d)(e)(f) or (g) correctly?

The Department will acknowledge in writing all reports submitted under 810.6(a)(d)(e)(f) and (g).