PART 810 Frequently Asked Questions

1. Who is covered by Part 810?

All persons subject to the jurisdiction of the United States who directly or indirectly engage or participate in the development or production of special nuclear material (SNM) outside of the United States are covered by Part 810, regardless of where the activities take place. Such activities of foreign legal entities and foreign nationals in the United States may be covered by Part 810. Licensees, contractors, or subsidiaries under the direction, supervision, responsibility or control of persons subject to Part 810 are also subject to Part 810. See 10 C.F.R. § 810.2(a) and definition of "person" in 10 C.F.R. § 810.3.

2. Our company's activities are strictly domestic. Does Part 810 apply to us?

Part 810 applies to transfers of technology or provision of assistance involving activities listed in 10 C.F.R. § 810.2(b) that are conducted either in the United States or abroad by "persons" covered by Part 810 (see description above). However, Part 810 does not apply to transfers of nuclear technology or provision of assistance within the United States between or among U.S. citizens, lawful permanent residents or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Examples of Part 810-controlled activities include (a) provision of covered technology or services to "foreign national" employees (see definition in 10 C.F.R. § 810.3); (b) doing business with foreign vendors, customers, or partners, even if within the United States; or (c) hosting foreign visitors.

3. Does Part 810 apply to transactions between U.S. companies?

Part 810 may apply to a transaction between U.S. companies if (a) the transaction involves transfer of nuclear technology to "foreign nationals" (see 10 C.F.R. § 810.3) or (b) if a subsequent retransfer outside of the United States is contemplated.

4. Which activities are subject to Part 810?

The following activities are expressly in the scope of Part 810, as specified in greater detail in 10 C.F.R. § 810.2(b):

(1) chemical conversion and purification of uranium and thorium from milling plant concentrates and in all subsequent steps in the nuclear fuel cycle;
(2) chemical conversion and purification of plutonium and neptunium;
(3) nuclear fuel fabrication;
(4) uranium enrichment;
(5) Nuclear reactor development, production or use of the components within or attached directly to the reactor vessel;
(6) Development, production or use of production accelerator-driven subcritical assembly systems;
(7) heavy water production;
(8) spent nuclear fuel (SNF) reprocessing; and

(9) The transfer of technology for the development, production, or use of equipment or material especially designed or prepared for any of the above listed activities.

The following activities are expressly outside the scope of Part 810, as specified in greater detail in 10 C.F.R. § 810.2(c):

1) Exports authorized by the Nuclear Regulatory Commission (NRC), Department of State, or Department of Commerce;
2) Transfer of publicly available information, publicly available technology, or the results of fundamental research;
3) Uranium and thorium mining and milling;
4) Nuclear fusion reactors per se;
5) Production or extraction of radiopharmaceutical isotopes when the process does not involve SNM; and
6) Transfer of technology to any individual who is lawfully admitted for permanent residence in the United States or is a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

In the Part 810 Supplemental Notice of Proposed Rulemaking (78 FR 46829, 46840, Aug. 2, 2013), DOE stated its decision not to expressly expand the text of Part 810 to cover the following "back end" activities in:

1) post-irradiation examination of SNF;
2) storage of irradiated nuclear materials;
3) movement and transportation of irradiated nuclear materials for disposal; and
4) processing of irradiated nuclear materials for disposal (e.g., processing for burial or vitrification).

However, any back-end fuel cycle activities related to an SNM separation or reprocessing program would be within the scope of Part 810. See 10 C.F.R. §810.2(a).

5. What is the difference between Part 810 and the NRC's nuclear import-export regulations at 10 C.F.R. Part 110?

NRC regulations at 10 C.F.R. Part 110 govern the export and import of nuclear equipment and material. Part 810 generally governs the exports of technology for development, production, or use (see 10 C.F.R. §810.3 for definitions of these terms) of reactors, equipment and material subject to Part 110. Part 810 does not apply to exports authorized by the NRC.

6. What technology and activity related to commercial nuclear power reactors is subject to Part 810?

Generally, Part 810 covers the transfer of services and technology for the development, production, or use (see 10 C.F.R. §810.3 for definitions of these terms) of the following items related to nuclear reactors:

- components within or attached directly to the reactor vessel;
- the equipment that controls the level of power in the core;
- the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core; and
- related equipment especially designed or prepared for nuclear reactors (See Nuclear Regulatory Commission regulations at 10 CFR Part 110, Appendices A through K, and O, for an illustrative list of items considered to be especially designed or prepared for reactors and other listed nuclear activities.).

Technologies for equipment outside the nuclear steam supply system (NSSS), including but not limited to diesel generators and switchyard equipment, and other technologies not specifically designed for use in a nuclear reactor, are outside of the scope of Part 810.

7. Our company is involved in the transportation and storage of spent nuclear fuel and radioactive waste. Are those activities within the scope of Part 810?

The transportation and storage of SNF and radioactive waste that is not related to the separation or reprocessing of SNM is outside of the scope of Part 810.

8. Our company is seeking to provide seminars to a foreign customer involving discussion of nuclear technology. The information that will be discussed is based on information that has been published and is available through NRC databases. Is this activity outside the scope of Part 810?

If the information that will be provided to the foreign customer is information that is accessible, without restriction, to the public or information that has already been published, then the information meets the definition of "publicly available information" or "publicly available technology" and is outside of the scope of Part 810. However, note that interpretation or analysis of publicly available information that in itself is not publicly available may be subject to Part 810.

9. Are public tours of commercial nuclear reactors subject to Part 810?

A tour of an operating commercial nuclear reactor that is limited to areas and information available generally to members of the public, and involves the transfer of "publicly available information" is outside of the scope of Part 810. This applies regardless of the citizenship of those individuals on the tour. The tour may include access to locations and viewing of equipment (including viewing an operating control room simulator), pictures of which have been published in books, periodicals, or on the internet.

10. Is the transfer of all company proprietary information subject to Part 810?

Only transfer of nuclear technical data or assistance involving activities listed in 10 C.F.R. § 810.2(b) is controlled under Part 810. Certain company information containing only financial and non-technical information may be marked as "proprietary" or "confidential" because it is commercially sensitive and is not covered by Part 810 per se.

For example, price indices, customer lists, and other accounting and marketing information may be protected by the company for reasons other than nuclear technical content.

11. Are marketing activities involving discussions of nuclear technology subject to Part 810?

Marketing discussions involving activities controlled under Part 810 are subject to Part 810, unless the discussions involve only "publicly available information" or "publicly available technology" as defined in § 810.3. If the discussions or written materials require the foreign party to sign a non-disclosure agreement (NDA), that may be (but is not necessarily) indicative of the transfer of non-public technical information subject to Part 810. However, if the sole purpose of the NDA is to protect non-technical proprietary information (such as financial information), then these communications may not be controlled under Part 810. See 10 C.F.R. § 810.3 and Guidance to Part 810: Assistance to Foreign Atomic Energy Activities, DEFINITIONS (§ 810.3).

12. What is the difference between a general and a specific authorization?

A general authorization is for certain categories of activities that the Secretary of Energy has determined will not be "inimical to the interest of the United States". Activities eligible for general authorization are listed at 10 C.F.R. § 810.6. The safety-related general authorizations at 10 C.F.R. § 810.6(c) are subject to prior DOE consultation and approval.

If an activity within the scope of Part 810 is not generally authorized, a specific authorization from the Secretary of Energy is required before the activity may proceed. Activities subject to specific authorization are listed at 10 C.F.R. § 810.7 and must be authorized in accordance with 10 C.F.R. § 810.9.

Note, however, that the use of any specific ***or general*** authorization is subject to reporting requirements. Reporting requirements are listed at 10 C.F.R. §810.12. All general authorizations are subject to post-activity reporting requirements based on the subsection of § 810.6 that applies.

13. How do I determine if an activity is eligible for general authorization?

Persons may make their own assessments whether a general authorization is available for their activities in accordance with § 810.6. Persons that are uncertain whether their activities are eligible for a general authorization may seek an advisory opinion from DOE under 10 C.F.R. §810.5 -- Interpretations. A response is normally issued within 30 days of DOE's receipt of the request.

14. What types of activities are eligible for the general authorization at 10 C.F.R. § 810.6?

The general authorization at 10 C.F.R. § 810.6(a) is available for activities within the scope of Part 810 (listed in § 810.2(b)) in and involving destinations listed in Appendix A to Part 810, except activities involving certain sensitive technologies (listed in § 810.7(b) and (c)). Other subsections of § 810.6 generally authorize transfers to foreign national employees working at NRC-licensed facilities, safety-related activities, IAEA activities, and certain methods for extraction of molybdenum for medical use. Examples of activities eligible for general authorization at 10 C.F.R. § 810.6 include:

- Providing commercial reactor design technology to a foreign company in a country listed in Appendix A (e.g., France): *Authorized by § 810.6(a).*
- Providing light water reactor (LWR) fuel specifications to a foreign company in a country listed in Appendix A (e.g., Japan): *Authorized by § 810.6(a).*
- Providing unescorted access to a nuclear power station to a person who is (a) a "foreign national" (see definition at 10 C.F.R. § 810.3) and (b) a citizen of a country listed in Appendix A (e.g., Germany): *Authorized by § 810.6(a).*
- Providing access to nuclear reactor operating data to an employee who is (a) a "foreign national" (see definition at 10 C.F.R. § 810.3) and (b) a citizen of a country listed in Appendix A (e.g., Canada): *Authorized by § 810.6(a).*
- Providing commercial reactor technology to an employee who is a foreign national of a country not listed in Appendix A (e.g. India) and working at an NRC-licensed reactor with unescorted access: *Authorized by § 810.6(b), subject to special conditions and reporting requirements.*
- Activities to prevent or correct a current or imminent radiological emergency at a safeguarded facility in a country not listed in Appendix A: *Authorized by 810.6(c)(1), with special advance notification requirements.*
- Operational safety benchmarking with a safeguarded nuclear power plant operator in a country not listed in Appendix A (e.g., India): *Authorized by 810.6(c)(2, subject to prior notification to and approval by DOE.*

Note that the use of the general authorizations in 10 C.F.R. § 810.6 are subject to certain limitations and reporting requirements. See 10 C.F.R. §§ 810.7, 810.8 and 810.12.

15. Can information controlled by Part 810 be transferred to countries listed in Appendix A to Part 810 without specific authorization?

Yes, such transfers are generally authorized under 10 C.F.R. § 810.6(a), but not information regarding Sensitive activities listed in § 810.7(b) and (c) (e.g., transfer of enrichment and reprocessing technologies.) Transfer of information on these activities is not generally authorized. It requires specific authorization regardless of the destination.

16. Our company frequently contracts with foreign nationals who are citizens of Mexico to provide assistance during nuclear plant outages. Do we now have to seek specific authorization prior to contracting with these Mexican citizens?

If the Mexican foreign nationals are granted unescorted access to perform services at an NRC-licensed nuclear power plant, the deemed export general authorization at 10 C.F.R. § 810.6(b) may allow these individuals access to Part 810-controlled information, as long as the other requirements of 10 C.F.R. § 810.6(b) (e.g., employment by a U.S. company, execution of a confidentiality agreement, filing a report, etc.) are met.

17. What kinds of contractors granted access to NRC-licensed nuclear power plants can be granted access to Part 810-controlled information under the general authorization at 10 C.F.R. § 810.6(b)?

Individuals who have a direct contractual relationship with the owner or operator of the NRC-licensed nuclear power plant and individuals who are employed by U.S. companies that have contractual relationships with the owner or operator of the NRC-licensed nuclear power plant may be granted access to Part 810-controlled information under the general authorization at 10 C.F.R. § 810.6(b), as long as the other requirements in § 810.6(b) are met.

18. Should a company seeking to provide assistance to prevent or correct a radiological emergency in a country listed at Appendix A to Part 810 use the general authorization at 10 C.F.R. § 810.6(c)(1)?

No. Persons seeking to provide assistance to prevent or correct a radiological emergency in a country listed in Appendix A to Part 810 can use the general authorization at 10 C.F.R. § 810.6(a), since this general authorization would be applicable to this activity, and therefore would not need to seek prior DOE approval under the general authorization at 10 C.F.R. § 810.6(c)(1).

19. As part of a cooperation agreement with a foreign utility in a country not listed in Appendix A to Part 810, our employees will be traveling outside of the United States to share operating experience with that utility. Is this activity subject to the "fast track" general authorization at 10 C.F.R. § 810.6(c)(2)?

If the benchmarking activities are

(a) limited to the provision of "operational safety" technology or assistance (see definitions in 10 C.F.R. § 810.3), and

(b) involve an existing reactor in a country with a safeguards agreement with the IAEA or an equivalent voluntary offer,

then this activity is eligible for the fast track general authorization at 10 C.F.R. § 810.6(c)(2) if the applicant notifies DOE in writing within 45 days in advance of the activity and DOE approves the activity in writing.

20. How do I determine whether a country has an agreement with the IAEA or an equivalent voluntary offer within the meaning of the general authorization at 10 C.F.R. § 810.6(c)(2)?

A list of countries that have safeguards agreements is available at the IAEA website at https://www.iaea.org/safeguards/safeguards-legal-framework/additional-protocol/status-of-additional-protocol "Equivalent voluntary offer" refers to a Voluntary Offer Agreement (VOA). VOAs are IAEA safeguards agreements executed by nuclear weapon states under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) of 1968 – the United States, China, Russia, the United Kingdom, and France.

21. Our company participates in assessments conducted by INPO and WANO. The teams conducting these assessments may involve "foreign nationals." What general authorizations are applicable?

First, determine whether the team conducting the assessment will need access to Part 810-controlled technology. If access to Part 810-controlled technology is required, then determine the citizenships of the foreign nationals participating in the assessment. If these individuals are citizens of countries listed in Appendix A to Part 810, then the general authorization at 10 C.F.R. § 810.6(a) could apply. If these individuals are citizens of countries not listed in Appendix A to Part 810, then the general authorization at 10 C.F.R. § 810.6(c)(2) may apply if the assessment involves operational safety information or assistance. The applicant should notify DOE at least 45 days before the assessment begins and await DOE approval prior to beginning the activity.

22. Our company has the opportunity to provide consulting services on best operating practices to a foreign company that is constructing new nuclear reactors. Is this activity eligible for a 10 C.F.R. § 810.6(c)(2) general authorization?

No. The 10 C.F.R. § 810.6(c)(2) general authorization is limited to furnishing operational safety information or assistance to existing operating reactors abroad. The activities described would not be limited to operational safety information or at existing reactors and therefore would not be eligible for the general authorization under 10 C.F.R. § 810.6(c)(2). If the reactor is located in a country listed in Appendix A to Part 810, this activity would be eligible for the general authorization under 10 C.F.R. § 810.6(a). Unless the activity is furnishing only "publicly available information" or "publicly available technology" (see definitions of these terms in 10 C.F.R. § 810.3), or is eligible for the general authorization under 10 C.F.R. § 810.6(a), it would require a specific authorization from DOE.

23. What happens if I notify DOE of intent to undertake an activity involving operational safety assistance and don't hear back within 45 calendar days of the notice?

DOE will make reasonable efforts to respond to the notice within 45 calendar days. If DOE will not be able to respond within 45 calendar days (e.g., due to the technical complexity of the request), then it will notify the applicant as soon as possible after receiving the notice and advise of an alternate timeline. Persons seeking to use the "operational safety" general authorizations at 10 C.F.R. § 810.6(c)(2) and (3) must wait for DOE's approval before proceeding with the activity.

24. The NRC is bringing a foreign delegation to our nuclear facility. Is this activity generally authorized?

Activities approved by the NRC, such as NRC-sponsored visits by foreign delegations, are outside of the scope of Part 810. Therefore, no DOE approvals or reporting requirements apply. Note that the NRC must authorize the activity for this exemption to apply.

25. Are all programs involving the Department of State generally authorized under 10 C.F.R. § 810.6(d)?

No, only a very limited number of exchange programs specifically approved by the Department of State in consultation with DOE are eligible for a general authorization under 10 C.F.R. § 810.6(d). Persons should seek advice from DOE if in doubt as to whether this general authorization is available.

26. The IAEA is conducting an inspection of our reactor. Is this activity generally authorized?

Yes. An IAEA inspection of a U.S. nuclear reactor would fall under the general authorization at 10 C.F.R. § 810.6(e). Note that reporting requirements under 10 C.F.R. § 810.12 apply.

27. We are hosting an IAEA delegation at our nuclear facility. Is this activity generally authorized?

The hosting of IAEA delegations officially sponsored or approved by the Department of State or DOE would fall under the general authorization at 10 C.F.R. § 810.6(f). Note that reporting requirements under 10 C.F.R. § 810.12 apply.

28. Who is a "foreign national"?

A "foreign national" is an individual who is NOT: (a) a citizen or national of the United States; (b) a U.S. lawful permanent resident; or (c) a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)) (e.g., persons to whom the U.S. Government has granted asylum or refugee status). Please see definition of "foreign national" at 10 C.F.R. § 810.3.

29. What about a "foreign national" who is a citizen of France and Iran?

DOE considers all countries of foreign allegiance (citizenship or permanent residency) when evaluating the applicability of the 10 C.F.R. § 810.6(a) or (b) general authorizations for deemed exports to foreign national employees. Therefore, for cases of dual citizenship potentially involving countries requiring specific authorization under Part 810, persons should seek advice from DOE.

30. What about a "foreign national" who is a permanent resident of France and a citizen of Iran?

Permanent residency (or citizenship) in a country other than the United States does not supersede other citizenships for purposes of Part 810. However, as above, DOE will consider on a case-by-case basis all transfers to "foreign nationals" with more than one citizenship or permanent residency. Persons should seek advice from DOE in such cases.

31. One of our employees who is a citizen of Canada and a citizen of India recently renounced his Indian citizenship. Would DOE still consider him a citizen of India for purposes of Part 810?

The answer depends on facts regarding the laws of the countries involved. Generally, once an individual formally renounces his/her citizenship in accordance with the laws of the original country and the new country, the original citizenship is no longer considered for purposes of Part 810. Therefore, in this example, DOE would consider this individual as a citizen of Canada only.

32. We are a nuclear power plant operator and are seeking to hire an employee who is a foreign national into our transmission organization. Do we have to worry about Part 810?

Transmission technologies are outside of the scope of Part 810. However, if the "foreign national" is granted physical or electronic access to nuclear reactor design or operating information as part of his/her job, Part 810 applies.

33. Do I need to submit a post-activity report for operational safety activities under 10 C.F.R. § 810.6(c), even though DOE has already approved such activities?

Yes. In order for DOE to be aware that approved activities are taking place, companies should submit reports within 30 days after completing activities authorized under 10 C.F.R. § 810.6(c). Special arrangements may be made for specific site situations emergency activities under 10 C.F.R. § 810.6(c)(1).

34. Do I need to send a report to DOE when a generally authorized activity has ceased?

No. Although there is a reporting requirement within 30 days after beginning any generally authorized activity per 10 C.F.R. § 810.12(e), there is no reporting requirement to inform DOE of the completion of the generally authorized activity, except for operational safety activities authorized under 10 C.F.R. § 810.6(c) (see above) and the post-activity report for generally authorized activities in Ukraine per 10 C.F.R. § 810.14(b). In contrast, completion of a specifically authorized activity or its termination before completion must be reported to DOE per 10 C.F.R. § 810.12(b).

35. DOE does not have control over the foreign assurance part of the Part 810 specific authorization review and approval process. What happens if the foreign assurance process takes a long time?

Applicants may check in periodically with DOE during the government-to-government assurance process to determine whether assurances have been provided by the foreign government to the State Department. Applicants may also wish to communicate with the anticipated foreign recipients of the technology. These foreign companies may be able to contact their government to inquire about the status of the foreign assurances. It is also suggested that, when submitting the application, the applicant provide a point of contact, including name and phone number, for each foreign recipient, to assist in the assurances process.

36. What happens to a specific authorization that was granted before March 25, 2015 for a country that remains subject to specific authorization? Is it still effective and are the reporting requirements still the same?

Yes. Specific authorizations granted with respect to countries that remain subject to specific authorizations are not affected by the amendments to Part 810. These specific authorizations remain effective until their original expiration date. There is no change in reporting requirements with respect to these specific authorizations.

37. What do I do if my company did not come into compliance with Part 810 amendments by the August 24, 2015, deadline?

Persons that did not come into compliance with Part 810 amendments by the August 24, 2015 savings clause deadline found in 10 C.F.R. § 810.16 with respect to activities that were generally authorized prior to the March 25, 2015 amendments to Part 810 should contact DOE. DOE will work with such persons to establish a path forward for compliance with Part 810.

38. 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.

39. 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, whom 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.

40. 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 section 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 810.8(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.

41. 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)

42. What do I do if I have an ongoing activity that I previously reported under as a generally authorized activity under section 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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. These positions should be reviewed by subject matter experts in order to assess 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.

51. 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.

52. 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.

53. How do I make a self-disclosure?

Self-disclosures must be made via e-mail to Part810@nnsa.doe.gov within 30 days of becoming aware of a violation or potential violation of Part 810. The notification should include all relevant information surrounding the violation, any actions taken to remedy the situation, and any steps taken to ensure the same type of violation will not take place again. DOE will evaluate the information provided and respond in writing.

DOE strongly encourages prompt self-reporting of actual or potential violations of the Part 810 regulation. When considering instances of actual or potential violations, DOE will take into account whether the violation in question was self-reported. Law enforcement agencies may also consider the issue of timely self-reporting when assessing any violation or attempted violation for investigation or prosecution. Pursuant to the Atomic Energy Act of 1954 (AEA), as amended, and Title 18 of the United States Code, willful violations (or attempts or conspiracies to commit or conceal such violations) of section 57 of the AEA, are subject to criminal penalties, including terms of imprisonment and fines."

54. 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).

55. Does 10 CFR § 810.14 also apply to transfers of technology outside the territory of Ukraine to a Ukrainian citizen or national or to a company incorporated in Ukraine?

The current geopolitical situation within Ukraine presents the risk that a transfer of technology to Ukraine may actually be to an area that is not under the control of the Government of Ukraine. As highlighted by the preamble to the final rule, the pre-activity notification requirements set forth in § 810.14(a) are for "any generally authorized activity involving Ukraine," including "transfers of nuclear technology and assistance to areas that are not under control of the Government of Ukraine." 35 Fed. Reg. 9362, 9365.

DOE regards transfers of technology to Ukrainian citizens in the United States (deemed exports) as not "involving" Ukraine in the sense meant by § 810.14, and such transfers therefore do not require any advance notice to the DOE (though as with any generally authorized activity under § 810.6 require submission of reports as described in § 810.12(e)). However, transfers to entities organized in Ukraine, such as corporations chartered in Ukraine, do "involv[e]" Ukraine and will require pre-activity and post-activity reporting as described in § 810.14.

56. The preamble refers to the exclusion of "steam turbine generators" from 10 CFR Part 810. Does this include "steam generators"?

Section 810.2(b)(5) includes within the scope of Part 810 controls technology relating to "[n]uclear reactor development, production or use of the components within or attached directly to the reactor vessel, the equipment that controls the level of power in the core, and the equipment or components that normally contain or come in direct contact with or control the primary coolant of the reactor core."

The "steam turbine generator" in a Boiling Water Reactor uses steam created from the primary coolant loop. However, this equipment is located outside the reactor containment, in what is sometimes called the "Balance of Plant." This "steam turbine generator" technology therefore is outside the scope of Part 810.

The "steam generator" used in a Pressurized Water Reactor is within the containment structure and is a fundamental part of the "Nuclear Island." Thus, steam generators are within the scope of Part 810. Additionally, "Steam generators" are explicitly included in Appendix A to 10 CFR Part 110, Illustrative List of Nuclear Reactor Equipment Under NRC Export Licensing Authority.

57. If a company wishes to provide operational safety information or assistance to an existing safeguarded civilian nuclear power plant in a country listed in Appendix A to Part 810, should it proceed under the general authorization at 10 CFR § 810.6(c)(2), which requires notifying DOE in writing and waiting for DOE approval of this activity within 45 days of notification, or can it instead proceed under the general authorization at 10 CFR § 810.6(a)?

The company would proceed under the general authorization at 10 CFR § 810.6(a) to provide operational safety information or assistance to an existing safeguarded civilian nuclear power plant located in a country listed in Appendix A to Part 810. No prior notification to DOE or DOE approval would be required. As with any generally authorized activity and pursuant to § 810.12(e), a report to DOE is due 30 days after commencement of the activity. The general authorization at § 810.6(c)(2) is not intended to apply to this activity. Section 810.6(c)(2) was written specifically for those countries not listed in Appendix A, and it generally authorizes the provision of operational safety information or assistance to safeguarded civilian nuclear reactors in these countries, provided that DOE is notified in writing at least 45 days in advance of the activity and approves the activity in writing.

58. What activities fall within the scope of the limited general authorization for Mexico under 10 CFR § 810.6(a)?

Prior to the revised Part 810 rule, which came into effect on March 25, 2015, Mexico was a generally authorized destination for transfers of nuclear power reactor technology under Part 810. Under the revised Part 810 rule, Mexico qualifies as a generally authorized destination under the general authorization at 10 CFR § 810.6(a) only with respect to activities related to International Atomic Energy Agency (IAEA) Project and Supply Agreements (PSAs) concerning Units 1 and 2 of the Laguna Verde Nuclear Power Plant (INFCIRC/203 and INFCIRC/203 Add. 1) and the Ocoyoacac TRIGA Mark III research reactor (INFCIRC/825). Other activities involving Mexico that are within the scope of Part 810, including activities related to prospective additional units at Laguna Verde, require a specific authorization.

59. Is conducting or instruction on conducting a Probabilistic Risk Assessment (PRA) at a nuclear power plant in a destination requiring specific authorization considered "operational safety" work that is generally authorized under 10 CFR § 810.6(c)(2)?

Yes. As explained in the Preamble to the Federal Register notice publishing the Final Rule (80 Fed. Reg. 9,359, 9,361) (Feb. 23, 2015), PRA training or other assistance and/or conducting a PRA for an existing safeguarded civilian nuclear reactor in a destination not listed in Appendix A to Part 810 would be considered operational safety work that qualifies for general authorization at 10 CFR § 810.6(c)(2). Pre-approval and reporting requirements apply, as described below. It is important to note that any PRA training or assistance should not address design principles or provide any information on how to redesign a specific facility. If design principles or information on how to redesign a specific facility are to be addressed, a specific authorization is required.

Section 810.6(c)(2) requires DOE to be notified in writing at least 45 days before the start of the activity and approve of the activity within 45 calendar days of the notice. The applicant's notification should provide all the information required under § 810.11 and include specific references to the national or international safety standards applicable to any PRA that will be conducted or addressed in training.

As with any generally authorized activity, a report is due 30 days after the commencement of the activity. Reporting requirements are listed in § 810.12(e) and should confirm that design or redesign principles were not addressed.

60. Our University is planning research on the modeling of a proposed new reactor design. This research is a continuation of prior research with a foreign owned corporation, and all results will be made public. Is this considered fundamental research?

Yes. "Fundamental research" is defined in 10 CFR § 810.3 as follows:

> *Fundamental research* means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

The DOE/NNSA Part 810 guidance document[1] provides examples of fundamental research and also offers a counterexample to help distinguish between exempted and covered research:

Examples:

- University research under a government grant, the results of which are to be published as a series of papers and as public theses by participating graduate students. This work is fundamental research exempt from Part 810 coverage under § 810.2(c)(2).
- University research under an agreement with a corporation, the results of which the university will be allowed to publish in papers and as public theses. This work is fundamental research exempt from Part 810 coverage under § 810.2(c)(2).

Counterexample:

- University research under an agreement with a corporation, the results of which the university will not be allowed to publish until after the corporation has reviewed the results and redacted information it desires to hold as a trade secret. This work is *not fundamental research* and accordingly is subject to Part 810.

The scenario described in the question appears to fit within the contours of the second example of fundamental research set forth above. In accordance with § 810.2(c)(2), such research is exempt from 10 CFR Part 810 coverage.

However, if the research moves into a phase where the sponsoring corporation exerts a right to review results and withhold proprietary information, or begins to work on additional technologies that might be associated with a new reactor system (e.g., reprocessing), the work may be subject to Part 810. The university should continue to review all proposals to expand or change the scope or the degree of oversight from the corporate sponsor of this research project for potential Part 810 implications.

[1] Guidance to the Revised Part 810 Regulation: Assistance to Foreign Atomic Energy Activities, available at: nnsa.energy.gov/part810.

New FAQs Added 04/10/2019:

61. The Department of State recently announced its intention to negotiate Nuclear Cooperation Memoranda of Understanding (NCMOU) with partner countries. Would such NCMOUs obviate the need for authorization pursuant to 10 CFR Part 810?

No. NCMOUs do not take the place of other regulatory requirements, including 10 CFR Part 810 authorizations administered by the Department of Energy. Exports of controlled nuclear technology to any destination continue to require specific authorization under section 810.7 unless a general authorization under section 810.6 applies, regardless of whether there is an NCMOU in place with the destination. For generally authorized destinations, Part 810 reporting requirements will continue to apply.

62. If the United States concludes an NCMOU with a partner country, does that mean the partner country is generally authorized under 10 CFR Part 810?

No. Conclusion of an NCMOU with a particular country does not predetermine its inclusion on the generally authorized destinations list, a decision which is based on the Secretary's determination, following interagency consultation and concurrence that such inclusion is not inimical to the interest of the United States. Any changes to Appendix A of 10 CFR Part 810 will be officially noticed in the Federal Register prior to a destination being added (or removed) from the list of generally authorized destinations.

New FAQs Added 04/17/2019:

63. When reviewing a request for specific authorization, does DOE take into account the exporter's internal Part 810 training program?

Pursuant to 10 CFR 810.9(b)(10), when reviewing a request for specific authorization, the Secretary will take into account "any other factors that may bear upon the political, economic, competitiveness, or security interests of the United States." Unauthorized transfer of Part 810-controlled information has significant implications for the political, economic, competitiveness, and security interests of the United States. Accordingly, DOE encourages U.S. exporters to maintain export compliance programs that promote awareness of Part 810 and its requirements. In reviewing a request for specific authorization, DOE may consider whether, and in what fashion, the exporter provides training to its employees to ensure they understand their obligations to protect Part 810-controlled information.

DOE/NNSA's public outreach efforts to promote Part 810 compliance have included the release of various guidance materials available in the Document Library at https://www.energy.gov/nnsa/10-cfr-part-810. These materials include a set of Power Point slides entitled *Continuing Obligations under 10 CFR Part 810: Awareness Training for Individuals with Knowledge of Nuclear Technology*.

NOTE: These materials are considered guidance provided by DOE's Office of Nonproliferation and Arms Control (NPAC) pursuant to 10 CFR 810.5 and subject to the limitation in 10 CFR 810.5. Unless authorized by the Secretary in writing, no interpretation of the regulations in 10 CFR 810 other than a written interpretation by the DOE General Counsel is binding upon DOE.

64. With regard to the definition of Sensitive Nuclear Technology in 10 CFR 810.3, how does DOE determine whether a given piece of information is "important" to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water?

The determination of whether a given piece of information is "important" for purposes of the Sensitive Nuclear Technology (SNT) definition in 10 CFR 810.3 is made through a rigorous and formal DOE-led process that incorporates input from technical and legal experts, as well as the perspective of the Department of State, and takes a number of factors into account.

Through this process, DOE determines whether the in question is "important" to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water *by the foreign country receiving the information*. SNT determinations therefore consider not just the information being transferred but also the knowledge, capabilities, facilities, and programs of the country receiving the information.

Additionally, pursuant to 10 CFR 810.7(c), all transfers of assistance and technology related to enrichment, reprocessing, and heavy water production require Part 810 specific authorization, irrespective of destination, even if those transfers are not deemed to constitute SNT. This requirement also applies to transfers of assistance and technology related to plutonium fuel fabrication and the development, production, or use of production reactors and production accelerator-driven subcritical assembly systems.

Individuals with questions about whether a potential export includes information that may constitute SNT should contact DOE first at Part810@nnsa.doe.gov.

65. If an exporter has submitted a timely request for renewal of a Part 810 specific authorization, and the expiration date of the authorization has passed without a decision on the renewal request, can the exporter continue to transfer controlled nuclear technology and assistance pursuant to the terms of the expired specific authorization?

If an exporter has submitted a timely request for renewal of a Part 810 specific authorization, and is faced with the possibility of the expiration date of that authorization passing without a decision on the renewal request, the exporter should contact the Part 810 office at Part810@nnsa.doe.gov to request confirmation that the authorization continues to be valid for continuing activities until a final decision is made. Following such a confirmation, exporters are also encouraged to contact the Part 810 office, when needed, for guidance as to which activities qualify as "continuing" for these purposes. Reporting requirements for the continuing activities continue to apply.