

DOE Publishes Proposed Revisions to Export Control Regulations

September 7, 2011

Today, the U.S. Department of Energy (DOE) published proposed changes to its export control regulations in 10 C.F.R. Part 810—the first substantive changes to Part 810 since 1986. The current Part 810 regulations are remnants of the Cold War and are generally viewed as burdensome and difficult to implement from both the applicant's and DOE's perspective. Among others, the proposed changes will affect companies that employ or host visits from foreign nationals or that are involved with nuclear-related work overseas. Nuclear industry vendors also may be affected.

By way of background, Part 810 regulates the export of certain nonpublic, nuclear-related technology and information. Part 810 covers most of the nuclear fuel cycle, from chemical conversion of uranium after it is milled to storage of irradiated materials and processing of high-level waste. For a commercial nuclear power plant, Part 810 typically covers the nuclear island but not the "balance-of-plant"; the latter is typically under the jurisdiction of the U.S. Department of Commerce (DOC).

The most significant change is DOE's rewrite of the provisions regarding which export activities require DOE's prior approval (i.e., activities that require a "specific authorization") and which export activities do not (i.e., activities that require only a "general authorization"). The existing rules focus on activities that require a specific authorization and provide a list of countries to which exports are prohibited without such authorization. DOE's proposed rules identify and clarify those activities that are generally authorized under Part 810, and replace the current list of prohibited countries in 10 C.F.R. § 810.8(a) with a list of countries to which exports are generally authorized.

Another significant change is the addition of provisions to regulate "deemed exports." DOE has always regulated transfers of certain nuclear-related information to foreign nationals inside the United States as if they were exports of technology to the foreign national's country of origin (i.e., they are "deemed" to be exported to the recipient's home country). But Part 810 has been silent on this issue. The proposed rules codify for the first time what DOE expects to be included in a deemed export application.

There are many other changes that affect nuclear-related exports, or sharing such information with foreign nationals inside the United States.

DOE is accepting comments on the proposed rules until November 7, 2011. Affected companies should evaluate the proposed rules' potential affect on their export practices and decide whether they have concerns that would justify submitting comments as part of the rulemaking process. Morgan Lewis can facilitate that process.

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