

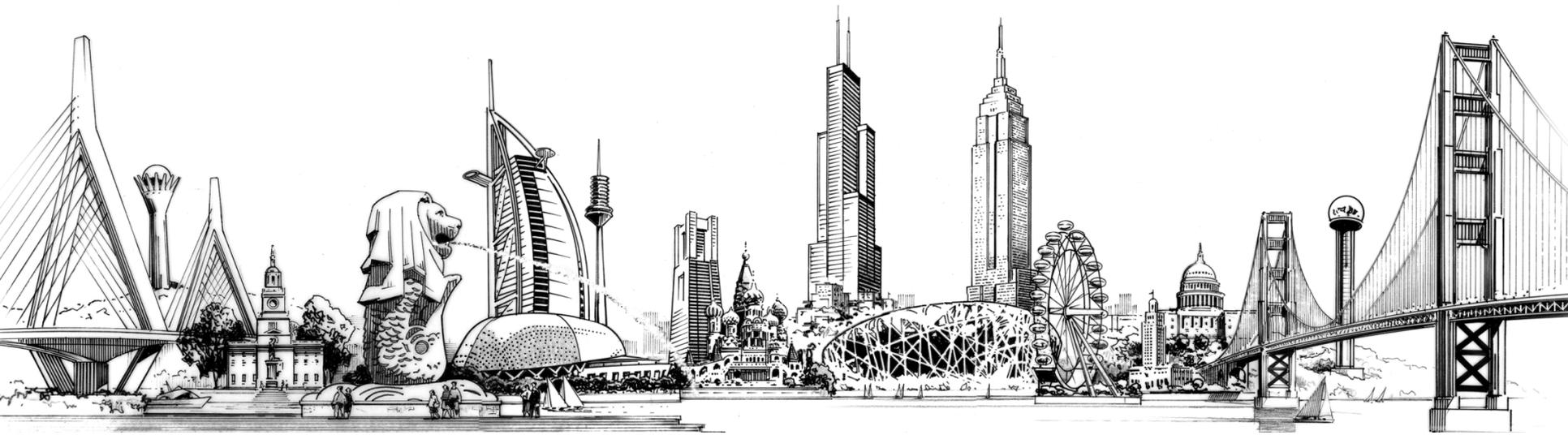
Morgan Lewis

ADHERING TO CHANGES IN U.S. NUCLEAR EXPORT CONTROLS "PART 810" TECHNOLOGY

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SECTION 01

NUCLEAR TECHNOLOGY EXPORT CONTROLS– THE BASICS

Nuclear Technology Export Controls – The Basics

- Statutory basis – very old:
 - 57b.(2) of the Atomic Energy Act – “It shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except . . . (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States.”
- Key terms
 - “Special Nuclear Material” – enriched uranium, plutonium
 - Development and Production
- 10 CFR Part 810
 - U.S. Department of Energy (DOE) regulations implementing Section 57b.(2).
 - Assistance to Foreign Atomic Energy Programs

Nuclear Technology Export Controls – The Basics

- What constitutes “assistance” to a foreign national?
- Direct assistance versus indirect assistance
- Assistance is very broad
 - *Assistance* means assistance in such forms as instruction, skills, training, working knowledge, consulting services, or any other assistance determined by the Secretary. Assistance *may* involve the transfer of technical data.
- Technical data can be transferred by
 - *Visual*
 - *Computer Access*
 - *Conversations*
 - *Providing training or services*

*****Must be non-public*****

Nuclear Technology Export Controls – The Basics

- Technology Scope of Part 810 for commercial nuclear reactors
 - “Nuclear reactor development, production, or use of the components 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”
 - Old = nuclear island; New – NSSS
 - Everything else likely = Dept. of Commerce
- “Foreign National” is not
 - U.S. Citizen
 - U.S. Lawful Permanent Resident (Green Card)
 - Protected individuals under Immigration & Naturalization Act

Nuclear Technology Export Controls – The Basics

- Effect?
 - FNs working on U.S. job site
 - FNs visiting U.S. job site
 - FNs working at U.S. engineering companies
 - IT support or computer access by FNs
 - Reactor design support from overseas
 - Assisting with design & construction of foreign reactors
 - Providing training or repair services to FNs

Nuclear Technology Export Controls – The Basics

- Two types of Authorizations
 - General Authorization (Section 810.6) – eat the cookie first, then tell Mom
 - Granted by regulation
 - After-the-fact reporting typical
 - Need no-retransfer assurances for reporting
 - Specific Authorization (Section 810.7) – need permission to eat the cookie
 - Requires DOE prior-approval
 - Authorization specifies reporting obligations
- Some hybrid exceptions



March 2015 Rule Changes

- Bifurcation of the World for commercial nuclear power plant technology
 - Generally authorized or “Green” countries
 - Specifically authorized or “Red” countries
- March 2015
 - revised rules became effective
 - guidance & FAQs
 - August 24, 2015 - transition compliance date
- 123 Agreements requirement^{**}
 - 70+ countries switched from Green to Red
 - Nepal, Philippines, Mexico, etc.
 - Some did not switch – ^{**}Russia, China, India
- New unescorted Access “Magic” – Red → Green!

March 2015 Rule Changes

Generally Authorized Destinations (Part 810, Appendix A)

Argentina	Egypt	Korea, Republic of	Slovakia
Australia	Estonia	Latvia	Slovenia
Austria	Finland	Lithuania	South Africa
Belgium	France	Luxembourg	Spain
Brazil	Germany	Malta	Sweden
Bulgaria	Greece	Mexico (For all activities related to INFCIRC/203 INFCIRC/203/Add. 1, and INFCIRC/825 only)	Switzerland
Canada	Hungary	Morocco	Taiwan
Chile (For all activities related to INFCIRC/834 only)	Indonesia	Netherlands	Turkey
Colombia	International Atomic Energy Agency	Norway	Ukraine (Refer to § 810.14 for specific information and requirements)
Croatia	Ireland	Poland	United Arab Emirates
Cyprus	Italy	Portugal	United Kingdom
Czech Republic	Japan	Romania	Vietnam
Denmark	Kazakhstan		

Penalties for Violations - Criminal

- Criminal Penalties (“willful”)
 - Preemptive Penalties
 - Injunction
 - Restraining or other Orders
 - Fines & Jail Time Up to \$10k per violation / 10 years in jail
 - Up to \$20k / life imprisonment - if intent to injure the United States
 - 18 USC 1001 – material false statements

Penalties for Violations – Civil & NDAA

- Civil Penalties
 - Enforcement discretion to date, but....
- November 2015 – National Defense Authorization Act:
 - “Not later than 60 days after the date of the enactment of this Act, the Secretary of Energy shall issue guidance with respect to *the use of the clear and intended authority of the Secretary under section 234 of the Atomic Energy Act of 1954 (42 U.S.C. 2282) to impose civil penalties*, including fines and debarment, and to make referrals to the Attorney General for prosecution, for violations of the terms of authorizations for the transfer of United States civil nuclear technology issued under section 57 b. of the Atomic Energy Act”
 - Special reports for “covered technology” to China and Russia only
 - Pre-notice to Congress before any specific authorization is granted to China and Russia for a covered technology
 - Additional reports to Congress on all new authorizations issued
 - Consulting with Director of National Intelligence before exporting technology

DOE's Revised Guidance

- 2015 Guidance is being updated
 - “Americanization” – rejected
 - Part 110 (NRC) vs. Part 810 (DOE)
 - Overlap – none, but
 - NRC license = tech export approval?
 - GA vs. Out of Scope
 - \$ only?
 - PRA outside
 - Dual-citizens (non-U.S.)
 - Foreign companies – “reaching in”?
 - Next guidance rev?

What Does This Mean?

- Congress is watching
- DOE guidance clarified obligations
- August 2015 compliance transition date is past
- DOE has clear civil penalty authority
- Don't be the industry's "Poster Child"?
 - Not too late to come into full compliance

THANK YOU

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Biography



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Alex Polonsky represents nuclear industry companies on matters ranging from nuclear licensing, litigation, and investigations, to nuclear export controls. As the firm's facility security officer with a top-secret security clearance, Alex also supports investigations and litigation involving classified information. He is the co-author of "Fundamentals of Nuclear Regulation in the United States" and a teacher of the "NRC 101" course promoted by EUCI. He has authored articles in the Nuclear Plant Journal and World ECR on Part 810, and presented at numerous industry conferences on the topic.