

# Department of Energy Announces Significant Changes to the US Controls on Exports of Unclassified Nuclear Technology and Assistance

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In the first comprehensive rewrite of the U.S. controls on exports of unclassified nuclear technology and assistance in nearly 30 years, the National Nuclear Security Administration of the U.S. Department of Energy (DOE) has issued new Part 810 Regulations that will go into effect on March 25. U.S. companies and their non-U.S. subsidiaries that export, re-export or transfer designated nuclear technology and assistance, or that employ non-U.S. persons in their nuclear-related operations, should carefully review the new regulations and begin to implement appropriate changes to their policies and procedures. Failure to comply with the regulations can lead to significant criminal penalties under the Atomic Energy Act of 1954 and related statutes. Penalties for willful violations can be as high as \$20,000 per violation, life imprisonment or both.

The existing DOE Part 810 Regulations generally restrict exports, re-exports and transfers of a wide range of unclassified nuclear technology and assistance from the United States to foreign countries or to foreign persons (including persons in the United States who are not lawful permanent residents). The new Part 810 Regulations add to these restrictions and modify the definitions of several key terms. Among the more significant changes in the new regulations are:

- **List of Generally Authorized Countries.** In the new regulations, DOE has altered the way it identifies countries to which exports of unclassified nuclear technology and assistance are permitted or restricted. Existing DOE regulations set forth a list of countries for which “specific authorization” from DOE is required prior to export. The new regulations flip this approach by listing countries (and certain activities of the International Atomic Energy Agency) to which exports are “generally authorized.” Those countries are shown on the map below. Exports to all countries not on the generally authorized list will require prior approval from DOE under the new regulations.

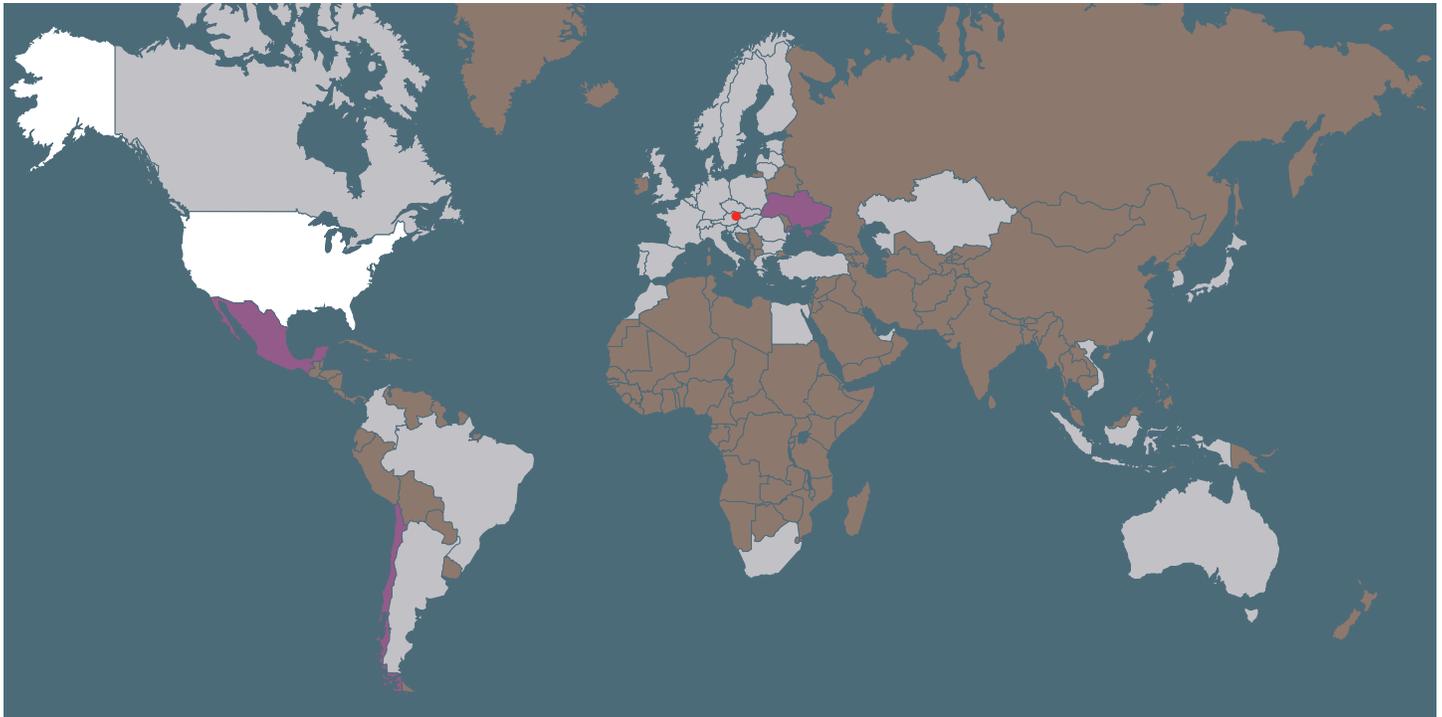
Significantly, as a result of changes to licensing policy, international treaties and other reasons, the new DOE list of generally authorized countries is not the exact mirror image of the existing list of countries requiring specific authorization. For example, under the new regulations, exports to Thailand, Bangladesh and Peru will now require prior approval from DOE even though those countries were not previously subject to specific authorization. By contrast, exports to Croatia, Kazakhstan, the United Arab Emirates and Vietnam will now be generally authorized, whereas previously they required specific authorization. Further, certain exports will now be permitted to Ukraine (a country on the old specific authorization list) provided certain prior notice requirements and other conditions are met. Finally, exports to Mexico and Chile remain generally authorized, but only if they are related to certain International Atomic Energy Agency programs.

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## Countries Generally Authorized for US Exports of Unclassified Nuclear Technology and Assistance



### Generally Authorized Destinations ■

Argentina  
Australia  
Austria  
Belgium  
Brazil  
Bulgaria  
Canada  
Colombia  
Croatia  
Cyprus  
Czech Republic  
Denmark

Egypt  
Estonia  
Finland  
France  
Germany  
Greece  
Hungary  
Indonesia  
Ireland  
Italy  
Japan  
Kazakhstan

Korea, Republic of  
Latvia  
Lithuania  
Luxembourg  
Malta  
Morocco  
Netherlands  
Norway  
Poland  
Portugal  
Romania  
Slovakia

Slovenia  
South Africa  
Spain  
Sweden  
Switzerland  
Taiwan  
Turkey  
United Arab Emirates  
United Kingdom  
Vietnam

### Generally Authorized Destinations With Special Limitations ■

Chile  
Mexico  
Ukraine

### Other ●

International Atomic Energy Agency (Vienna, Austria)

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- **Provision of Technology and Assistance to Non-U.S. Persons.**

The new regulations make changes to the existing restrictions on transfers of technology and assistance to foreign persons, including foreign persons within the United States (*i.e.*, so-called “deemed exports”). Some of these changes correspond to the generally authorized country list changes discussed above. For example, companies that have been granting access to controlled technology to nationals of Thailand, Bangladesh, Peru and other countries no longer generally authorized will now be required to obtain specific approval from DOE. However, foreign nationals who are authorized to work at a facility licensed by the U.S. Nuclear Regulatory Commission (NRC), have requisite security clearances and otherwise meet DOE and NRC requirements will be considered generally authorized under the Part 810 Regulations whether or not their country of citizenship is on the generally authorized list.

- **Covered Technologies and Activities.** The new regulations change many of the key definitions that determine whether certain technologies and activities are subject to the DOE export controls. Areas affected include the lists of covered and excluded nuclear-related items, technologies and activities. Also changed

are the definitions of “technology” (which is broadened to include technical data and assistance required for operation, installation, maintenance, repair, overhaul or refurbishing of a covered item); “nuclear reactor” (harmonized with definitions used by the NRC and other regulatory agencies); “publicly available” information and technology; and “fundamental research.”

DOE has announced that it will grant companies affected by the new regulations a 180-day transition period to comply with the new requirements for exports, re-exports and transfers to foreign persons and countries that are no longer generally authorized. Companies submitting specific authorization requests by August 24 may continue to engage in such activities until DOE acts on the requests. DOE is also undertaking a wide-ranging performance improvement program designed to speed decisions on requests for special authorizations and other rulings.