

## Client Alert

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## U.S. Relaxes Restrictions on Small Scale LNG Exports, States that It Does not Intend to Rescind Existing Non-FTA LNG Export Authorizations

All exports of liquefied natural gas (LNG) from the United States require authorization from the United States Department of Energy (DOE).

Applications to export LNG to countries with which the United States has a free trade agreement covering trade in natural gas (FTA countries) are required by law to be approved without modification or delay.

Applications to export LNG to other countries (non-FTA countries, which include Japan) are subject to public comment, are closely reviewed by the DOE in the public interest and may be denied. It is the position of the DOE that, in extraordinary circumstances, export authorizations may be revoked (or modified) after being granted.

### Encouraging Small Scale LNG Exports

On 25 July 2018, the DOE created a rule that will significantly speed up the approval process for "small scale" LNG exports to non-FTA countries. Under the new rule, any non-FTA export authorization application (except for countries otherwise restricted under U.S. law or policy such as North Korea, etc.) will be automatically considered consistent with "the public interest" and approved by the DOE on an expedited basis if it meets the following conditions:

- the proposed export is for volumes of natural gas up to 51.75 bcf/year (roughly 17 cargos, assuming an LNG tanker ship with a capacity of 3 bcf); and
- the application must be eligible for a categorical exclusion under certain U.S. environmental regulations. Commentators have noted that this exclusion typically applies to natural gas import/export activities that require minor operational changes to existing projects, but little or no new construction.

The DOE stated that this new rule is intended to stimulate LNG exports to emerging markets, including in the Caribbean, Central America and South America (given the practical and economic constraints limiting large-scale exports to countries in those regions). For short voyages in the Americas, the DOE envisions a variety of transaction modes such as LNG exports being loaded onto approved containers placed on container ships and barges (i.e., not only traditional LNG tankers).

Note, however, that this rule is not limited only to exports within the Americas - small scale LNG exports to any non-FTA country may qualify. Buyers and sellers of LNG may view this rule as an opportunity to increase shipments to traditional non-FTA LNG markets (such as Japan) or emerging Southeast Asian non-FTA markets.

The final rule is available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-07-25/pdf/2018-15903.pdf> (last accessed August 23, 2018).

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## DOE Policy Statement on Existing Non-FTA LNG Export Authorizations

Although it has asserted the authority to do so, the DOE has not thus far revoked a non-FTA LNG export authorization after having granted it. Nonetheless, LNG industry investors, lenders, terminal owner/operators, buyers and sellers have been concerned about the possibility of revocation. For this reason, such parties often include very detailed and specific provisions regarding the allocation of risk in relation to any DOE revocation in their respective LNG project-related agreements.

On 21 June 2018, the DOE issued a "policy statement" regarding revocation of non-FTA authorizations in response to questions from the LNG industry about what specific circumstances, if any, would result in revocation. The DOE stated that it "does not foresee a scenario where it would rescind one or more non-FTA authorizations". The statement also said that authorization holders and stakeholders "should have the utmost confidence in the validity of [DOE]'s LNG export authorizations for the full term of each non-FTA order."

While this policy statement does not change existing U.S. law, industry commentators view the statement as an attempt by the DOE to clearly emphasize the DOE's commitment (under the current U.S. administration) to encourage increased LNG exports.

The complete policy statement is available at:  
<https://www.energy.gov/sites/prod/files/2018/06/f53/2018-13427.pdf> (last accessed August 23, 2018).

We will continue to monitor developments concerning U.S. LNG export policy and provide further updates as warranted.

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