

DEPARTMENT OF ENERGY**10 CFR Part 810****Office of Arms Control and Nonproliferation Nuclear Information Export Policy; Determining Sensitive Nuclear Technology**

AGENCY: Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Energy (Department) today begins a rulemaking proceeding to codify and, if appropriate, modify its "Guidelines for the Designation of Sensitive Nuclear Technology." These guidelines have been used since 1986 to guide the Department's staff in determining on a case-by-case basis whether information proposed for export is "sensitive nuclear technology" under the Atomic Energy Act and the Nuclear Non-Proliferation Act. The Department has now decided to initiate this rulemaking to codify the guidelines in order to make them easily available to interested members of the public and to provide an opportunity for public comments.

DATES: Comments (3 copies) are due on or before August 24, 1995.

ADDRESSES: Comments must be submitted to U.S. Department of Energy, Office of Arms Control and Nonproliferation, Export Control Division, NN-43, SNT ANOPR, Docket No. [NN-RM-810], 1000 Independence Avenue, SW., Washington, DC 20585. FAX comments will not be accepted. The administrative record on file will be located in the Department's Freedom of Information Reading Room, Room 1E-190, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Zander Hollander, Export Control Operations Division, Office of Arms Control and Nonproliferation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2125, or Robert Newton, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0806.

SUPPLEMENTARY INFORMATION:**I. Background**

The Nuclear Non-Proliferation Act, 22 U.S.C. 3203(a)(6), describes "sensitive nuclear technology" (or SNT) as any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and which 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, but shall not include Restricted Data.

"Sensitive nuclear technology" may only be exported subject to special conditions to prevent dissemination of information which could be exploited for nuclear weapons-related purposes. Section 305 of the Nuclear Non-Proliferation Act, which amended the Atomic Energy Act by adding section 127, imposes six requirements for exports of source material, special nuclear material, production or utilization facilities, and SNT from the United States for peaceful nuclear uses. These requirements are:

(1) IAEA (International Atomic Energy Agency) safeguards as required by Article III(2) of the (Treaty on the Non-Proliferation of Nuclear Weapons) will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof * * *.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing

such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

42 U.S.C. 2156

In addition, section 306 of the Nuclear Non-Proliferation Act added section 128 to the Atomic Energy Act which, subject to an exception not relevant here, requires:

As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

42 U.S.C. 2157

It has been the Department's experience that, as a practical matter, once information has been determined to be SNT, it has not been exported because foreign recipients were unwilling to agree to U.S. consent rights over nuclear activities within the recipient nation's borders.

The Department exercises jurisdiction over the transfer of SNT by entities other than the Department through its regulations under 10 CFR part 810, which governs authorizations of nuclear assistance to foreign atomic energy activities and defines SNT in the same manner as the Nuclear Non-Proliferation Act. In determining whether to grant or deny a request for authorization for the export of any nuclear assistance, including SNT, the Secretary of Energy must find that the proposed export "will not be inimical to the interest of the United States." 42 U.S.C. 2077 (b). The 10 CFR part 810 regulations require the Secretary to consider several factors in making this finding, including the recipient country's nuclear nonproliferation credentials, the country's acceptance of international safeguards for all their nuclear projects, the availability of comparable assistance from other sources and "any other factors that may bear upon the political, economic, or security interests of the United States." 10 CFR 810.10 (b). In addition, authorizations for the export of information which is not SNT, but