

difficult or lengthy R&D and/or test activities?

5. Provide key information that is obtainable only from entities with practical experience in the particular area on critical aspects of facility design or operation optimization?

6. Concern a key process, component or subsystem that has been the subject of extensive R&D in the U.S. or which has been a problem at U.S. or foreign facilities?

7. Contribute significantly to the design, development or effective operation of a safety feature that is essential to facility operation?

8. Contribute significantly toward enabling an otherwise inoperable facility to operate at some level and produce useable quantities of material?

9. Significantly reduce the lead time and/or costs involved in designing, constructing, operating, or maintaining a facility?

Judgment as to the Technical Significance of the Information Proposed to be Transferred

Part 3: Consideration of Other Factors

The following factors shall be considered as a further help in arriving at a determination as to whether the Part 810 activity under consideration involves the transfer of SNT.

A. Level of expertise of the information recipient:

1. At what stage of research or development is the recipient's overall program?

2. Does the country of the recipient have an operating facility of this type?

3. Is the staff of the recipient facility or country experienced in this technology area?

4. Are there technical resources in the recipient country already in possession of information of the kind proposed to be transferred?

5. Does the country of the recipient have adequate technical resources and/or operating experience to be able to proceed independently of the information to be transferred?

B. Overall relative capability of the transferor and the recipient.

C. Probable reason for recipient's interest in assistance from U.S. industry (if A and B lead to the view that there are substantially comparable

capabilities in the recipient's country or available from other foreign sources).

D. Benefit to the recipient of the information to be transferred.

Factors to be considered include:

—Whether the information proposed to be transferred represents a significant net transfer of capabilities to the recipient country

—Whether there would be a significant impact (relative to strict reliance on the recipient's indigenous capabilities) on the construction schedule or initial operational capability or on the technical or economic viability

—Whether the specific information relates to a laboratory scale or small scale pilot project

E. Any other case specific considerations bearing on whether information of "key technical significance" should or should not be designated "sensitive nuclear technology."

F. Supplemental information. In the preparation of an analysis for a particular case, useful insight can be provided by an examination of previous export matters and other factors related to the application, such as the following:

1. How does this case compare to other cases where an SNT determination was made?

2. What Department of Commerce-licensed items have been processed for this activity?

3. Is the information to be transferred considered to be proprietary by the transferor?

4. Is there any relevant intelligence information available about the activity?

5. What is known about any competing bids from foreign suppliers?

V. Summary Assessment

After a careful assessment of all the factors in Part IV (Parts 1, 2 and 3) is made and documented, the entire analysis will be examined to determine whether any portion or the overall scope of the proposed transfer involves SNT. If the proposed application involves the transfer of SNT, the conditions set forth in section 127 and 128 of the Atomic Energy Act and those in the London Nuclear Supplier's Guidelines (INFCIRC/254) must be met as a

condition of approval under part 810. If the application is found not to contain SNT, the normal procedures for processing a part 810 application will be followed.

VI. Implementation

The DOE Export Control Working Group (ECWG) is responsible for the analysis, using these Guidelines, of specified requests for authorization or advisory opinions to determine whether they involve SNT. Frequency of meetings is determined by the number of cases to be considered. The Working Group Secretary prepares and distributes an agenda prior to meetings. At the conclusion of each meeting the Secretary of the ECWG documents the proceedings.

Membership on the Working Group is determined on the basis of the business to be conducted to ensure the highest level of expertise. It normally consists of:

- Director, PMSA (Chairman)
- ECWG Secretary, PMSA
- Chief, Operations Branch, PMSA
- Appropriate Action Officer, Operations Branch, PMSA
- A representative from the Office of the General Counsel
- A representative from International Programs, Office of Nuclear Energy
- A reprocessing, enrichment, or heavy water expert from the Office of Nuclear Energy
- A representative from the Office of International Affairs and Energy Emergencies
- Laboratory and contractor consultants (as needed)

The Director, PMSA is the final staff level authority for all SNT determinations.

When the preliminary review called for in section 12a of the Executive Branch Procedures is completed, ISA will transmit to the SNEC agencies the application along with any conclusion that SNT is involved.

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Kenneth E. Baker,

Acting Director, Office of Nonproliferation and National Security.

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