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RULEMAKING ISSUE (Affirmation)

December 19, 1996

SECY-96-258

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations

SUBJECT: DIRECT FINAL RULEMAKING: USEC PRIVATIZATION ACT -
CONFORMING CHANGES AND REVISION TO THE NRC ENFORCEMENT
POLICY (NUREG-1600)

PURPOSE:

To obtain Commission approval of a direct final rule to amend 10 CFR Parts 2, 40, 70, and 76 to bring these regulations into conformance with the new statutory requirements of the USEC Privatization Act and the associated revision to the Enforcement Policy (NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Action").

ISSUE:

The USEC Privatization Act changes the way uranium enrichment facilities are licensed/certified and adds different procedural requirements. The Commission's regulations must conform to these changes. A direct final rule providing the necessary amendments to the Commission's regulations should be published for public information and codified through the rulemaking process.

BACKGROUND:

On April 26, 1996, President Clinton signed into law H.R. 3019 (Public Law No. 104-134), legislation which provides FY 1996 appropriations to a number of Federal agencies. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the

CONTACT:
Charles W. Nilsen, RFS
(301) 415-6209
James Lieberman, OE
(301) 415-2741

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assets of USEC will be responsible for the operation of the two gaseous diffusion plants and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Atomic Energy Act of 1954 (the Act) with respect to the licensing of AVLIS and certification of Part 76 gaseous diffusion plants (GDPs). To implement these amendments to the Act, several conforming changes to 10 CFR Parts 2, 40, 70, and 76 are needed.

DISCUSSION:

The enclosed direct final rule, and associated proposed rule (Enclosure 1), will amend 10 CFR Parts 2, 40, 70, and 76 as required to implement Section 3116 of Public Law 104-134. To conform with the changes in the legislation (Enclosure 2), several new and revised licensing/certification requirements specific to USEC and its successor's operation of gaseous diffusion plants are required.

The legislation (1) requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; (2) prohibits issuance of a license/certificate to USEC or its successor if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or if issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; (3) eliminates the requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations each year; and (4) provides for issuing civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants.

- Concerning AVLIS, a principal effect of Pub. L. 104-134 is that the referenced AVLIS uranium enrichment facilities will be licensed under a single-step licensing process with the license issued pursuant to 10 CFR Parts 40 and 70, rather than a two-step licensing process under 10 CFR Part 50. The regulations previously were amended to provide a process for licensing uranium enrichment facilities using a single-step license as amended to conform with the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," Pub. L. 101-575 (57 FR 18388, April 30, 1992). Part 70 was made the basic regulation for licensing a uranium enrichment facility. That legislation specifically excluded AVLIS uranium enrichment facilities, then under development by the Department of Energy, from the one-step licensing process. However, Pub. L. 104-134 makes the development of AVLIS a responsibility of USEC (which will become a private entity as a result of this legislation) and removes the exclusion of AVLIS from one-step licensing. Therefore, the licensing of AVLIS, as with other licensed uranium enrichment facilities, will require an environmental review, adjudicatory hearing, inspection before operation, and third party liability insurance. It is also noted that, in addition to the regulations of Part 70, the licensing process for Louisiana Enrichment Services (LES) was

supplemented by Commission Notice and Order which established procedures and criteria for granting a license to LES. Procedures and criteria included in the LES notice and order are: (1) notice of receipt of application and availability of documents; (2) notice of hearing; (3) criteria for issuance of a license; (4) applicable rules and regulations; and (5) notice of intent regarding classified information. A similar action may be required for the review and licensing of AVLIS.

- The legislation includes specific language restricting issuance of a certificate or a license to the USEC or its successor if the issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. Heretofore, the Commission has not been asked in its regulatory decisions to evaluate whether a proposed action is inimical to the viability of the domestic industries subject to NRC's regulation. Information about the intent of the language, which is contained in a Senate Committee report on an earlier version of the legislation (S. Rpt. No. 104-173 on S.755, November 17, 1995), states that the provision is to "guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in such a manner inconsistent with its maintenance as an ongoing uranium enrichment concern." The report further states that no certificate or license should be issued "if in the opinion of the NRC the issuance of such a license or certificate of compliance would be inimical to the common defense and security of the United States or would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances." This is a new finding for which the staff has no experience. However, at present the staff plans to consider the following in evaluating this restriction on certification of the GDPs and licensing of AVLIS:

Information required under §§ 70.22 and 76.33 "information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government."

Information required under §§ 70.25 and 76.35 concerning funding plans for decommissioning and waste removal.

Information to be obtained under a proposed rule (61 FR 40555) amending the provisions of 10 CFR Parts 25 and 95 that deal with requirements for access to and protection of classified information. (The proposed rule should become final in January of 1997) These amendments were proposed to conform the NRC's regulations with the nationally applicable requirements for the protection of and access to classified National Security Information, which have been revised through the issuance of the National Industrial Security Program Operating Manual (NISPOM), published January 1995; Executive Order 12958, "Classified

National Security Information," dated April 17, 1995; and Executive Order 12968, "Access to Classified Information," dated August 4, 1995. Specifically, as related to foreign ownership, control, or domination, the NISPOM provides criteria for determining whether U.S. companies handling classified material are under foreign ownership, control, or influence (FOCI). FOCI requirements established in proposed revisions to 10 CFR Part 95 are more detailed and restrictive than the "Owned, Controlled, or Dominated" requirements in 10 CFR 50.38 that were previously used by the NRC, and are considered applicable to the subject finding the Commission must make under the provisions of the 1996 legislation.

Further, the existing regulations (§§ 40.31(b), 70.22(d), and 76.33(d)) reflect NRC authority under the Atomic Energy Act to require that an applicant, licensee, or certificate holder submit additional information concerning issuance of a license or certificate. Therefore, under these provisions USEC also may be required to submit additional information addressing whether issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. The staff is considering whether there are specific additional information needs and will recommend to the Commission whether further amendments to the regulations are warranted. In addition, the staff is preparing procedures for developing the required annual report to Congress and guidance for recertification, and developing procedures to consider the issues of foreign ownership and control, and inimicalness to the common defense and security and to a reliable and economical supply of domestic enrichments services.

- An amendment of Section 1701(c)(2) eliminates the requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations each year. Instead, the Commission can determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertifies compliance with its regulations not less than every 5 years. It is the NRC staff's intent that the initial certification will be for 2 years to permit most items of the compliance plan to be completed. Subsequent recertifications will be based on a number of considerations, including implementation status of compliance plans and certification regulatory experience as determined by the NRC's inspection program. The exact term will be specified in the certificate. Congress, however, did not eliminate the requirement found in Section 1701 (a) of the Act that the NRC shall report at least annually to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion plants.
- Section 3116 also modifies Section 234a of the Act to provide the Commission with the authority to issue civil penalties to the USEC or its successor for violation of the provisions of the Act, regulations, orders, and the terms of the certificate and compliance plan. Therefore, the staff proposes that the "General Statement of Policy and

Procedures for NRC Enforcement Action," NUREG-1600, be amended to provide examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of gaseous diffusion plant operations. In addition, Table 1A of the policy, which establishes base civil penalties for different types of licensees, is being modified to add a new category. The amended table will provide that the base civil penalty for a Severity Level I violation of the Commission's requirements by GDPs will be at the statutory limit of \$110,000. In accordance with Table 1B, civil penalties for Severity Levels II and III violations would have lesser amounts. In determining the proper civil penalty amount, the staff considered the structures of these tables, which generally take into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration.

Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and the worker receive higher civil penalties. In the case of GDPs, the staff notes that there are a large number of workers at the sites, significant source terms present (i.e., inventory of licensed material), and various chemical and toxic substances used as part of the GDPs operations. Therefore, in the event of an accident, there is significant potential from both radiological and non-radiological hazards to members of the public, including workers, and the environment.

With regard to the secondary factor of ability to pay, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts the licensee out of business¹ or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amount of penalties take into account a licensee's ability to pay. In this case, the staff believes that issuing a civil penalty of less than \$110,000 to the Corporation for a significant violation would be disproportionate to the Corporation's significant revenues. In other words, a civil penalty of \$110,000 for a Severity Level I violation would be financially appropriate, but not financially crippling. In addition, a penalty based on this amount should get more attention from the Corporation and should create a greater deterrent effect.

Given the financial resources of GDPs, it is appropriate to utilize significant civil penalties to provide an effective deterrence from violating the Commission's requirements such that the likelihood of performance necessitating a shutdown order would be minimal. Accordingly, the staff believes that a base civil penalty at the proposed amount is appropriate in view of the potential consequences during an accident and the ability to pay. In addition, establishing the base civil penalty at the statutory limit would provide, at the outset, a clear message concerning the cost of noncompliance and

¹ Orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities.

additional motivation to maintain safety and compliance. A number of the above points may argue for higher civil penalties for fuel cycle facilities. In a separate action the staff is considering whether higher penalties for such facilities should be sought. The proposed revisions for GDPs are described in the enclosed Federal Register notice (Enclosure 3). The revision would be effective concurrently with the amendments to 10 CFR Parts 2, 40, 70, and 76. They will be reflected in the next revision to NUREG-1600.

In addition, in response to the "Rulemaking Plan - USEC Privatization Act," which was made available to the public on the NRC electronic bulletin board, USEC by letter dated November 13, 1996 provided comment concerning the rulemaking action (Enclosure 4). In their letter USEC provided proposed revisions to CFR Parts 76, 70, and 40 for the purposes of implementing the USEC Privatization Act, and proposed language to § 76.45 to clarify the agency's intention concerning Director's decision on applications for amendments to the Certificate. USEC also proposed deleting certain sections which they view as immaterial now that the Director's decision on the initial certification has been issued. With respect to the first item, no new information was provided beyond that which the staff had already considered in this direct final rulemaking. The other USEC proposed revisions are not included as a part of this limited scope direct final rulemaking as they are not revisions to the Commission's regulations which are required by the legislative amendments to the Act being here codified.

RESOURCES:

Resources to complete and implement this rulemaking are included in the current budget.

COORDINATION:

The Office of the General Counsel has reviewed this direct final rule and has no legal objection.

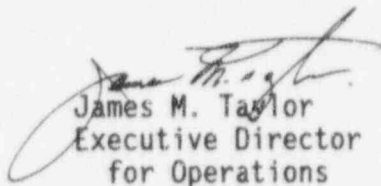
RECOMMENDATIONS:

That the Commission:

1. Approve the Notice of Direct Final Rule and associated Proposed Rule (Enclosure 1), and the revision to the NRC Enforcement Policy (Enclosure 3) for publication.
2. Certify that, if promulgated, this rulemaking will not have a significant economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

3. Note:

- a. This direct final rule action is noncontroversial and routine; therefore, the NRC is not seeking public comments and this action will become effective 60 days after publication in the Federal Register unless significant adverse comments are received;
- b. This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it only affects a single operator, USEC or its successor;
- c. In accordance with normal Commission practice, changes to the Enforcement Policy have not been subject to prior notice and comment. However, comments will be considered, as warranted, following publication.
- d. A public announcement will be issued (Enclosure 5);
- e. The appropriate Congressional Committees will be informed (Enclosures 6); and
- f. This rule is not a "Major rule" as defined by 5 U.S.C. 804(2) (Enclosure 7).


James M. Taylor
Executive Director
for Operations

Enclosures:

- 1) FRN - Direct Final (1-a) and Proposed Rule (1-b)
Line In/Out Attached (1-c)
- 2) Public Law 104-134
- 3) Supplement to NUREG-1600
- 4) USEC Letter
- 5) Public Announcement
- 6) Congressional Committee letters
- 7) Major Rule

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Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, January 7, 1997.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, December 30, 1996, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of January 6, 1997. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

ENCLOSURE 1-A

FRN - DIRECT FINAL

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 76

RIN: 3150-AF56

USEC Privatization Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the certification and licensing of uranium enrichment facilities to conform to changes made to the Atomic Energy Act of 1954, as amended (the Act), by the USEC Privatization Act legislation. Although the principal effect of this legislation is to direct the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity, this legislation also amended the Act with respect to NRC certification of gaseous diffusion plants leased by USEC and the licensing of atomic vapor laser isotope separation (AVLIS) technology. USEC is responsible for the operation of the two gaseous diffusion plants and the development of the AVLIS technology.

The legislation requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; provides for the issuance of civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants; prohibits issuance of a

license/certificate to the Corporation or its successor if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or if its issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; and eliminates the annual requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations. The Commission may determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertify USEC's or its successor's compliance with its regulations not less frequently than every five years. The adopted rule changes bring the current regulations into conformance with these provisions.

DATE: The final rule is effective on [insert date 60 days after publication] unless significant adverse comments are received by [insert date 30 days after publication]. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of comments received may be examined or copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6209.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1996, President Clinton signed legislation that provides for fiscal year (FY) 1996 appropriations to a number of Federal agencies (H.R. 3019 (Pub. L. 104-134)). Included within the legislation is Title III, Chapter 1, entitled "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of USEC will be responsible for the operation of the gaseous diffusion plants known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, the legislation amended the Atomic Energy Act of 1954, as amended (the Act), with respect to the certification of gaseous diffusion plants and licensing of an AVLIS uranium enrichment facility. The gaseous diffusion plants are regulated under 10 CFR Part 76, "Certification of Gaseous Diffusion Plants." Operation of an AVLIS uranium enrichment facility will be licensed under 10 CFR Parts 40, "Domestic Licensing of Source material" and 70, "Domestic Licensing of Special Nuclear Material."

Discussion

A principal effect of Pub. L. 104-134 on NRC licensing actions is that the referenced AVLIS uranium enrichment facilities will be licensed pursuant to the provisions of the Act pertaining to source material and special nuclear material rather than the provisions pertaining to a production facility. Under this legislation, AVLIS licensing will be a single-step licensing process with one license issued pursuant to 10 CFR Parts 40 and 70, rather than a two-step licensing process under 10 CFR Part 50. The regulations previously were amended on April 30, 1992 (57 FR 18388) to conform with the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," (Pub. L. 101-575) by providing a single-step process for licensing uranium enrichment. The April 30, 1992 amendments also made 10 CFR Part 70 the basic regulation for licensing a uranium enrichment facility. Although the 1990 legislation specifically excluded AVLIS uranium enrichment, then under development by the Department of Energy, from the one-step licensing process, Pub. L. 104-134 made the development of AVLIS a responsibility of USEC (which will become a private entity as a result of this legislation) and removed the exclusion of AVLIS from one-step licensing. Therefore, licensing of AVLIS, as with other licensed uranium enrichment facilities, will be a one-step process requiring an environmental review, adjudicatory hearing, inspection before operation, and third party liability insurance. However, for other purposes of the Act, such as controlling the export of specially designed or prepared uranium enrichment equipment and preservation of Federal authority in Agreement States, all uranium enrichment facilities regulated by the NRC

remain under the Atomic Energy Act provisions for production facilities. Specific implementing amendments are as follows:

In 10 CFR 70.1, "*Purpose*" is revised to indicate that all uranium enrichment facilities requiring a license will be licensed under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material."

In 10 CFR 40.4 and 70.4, "*Definitions*" the term Corporation is added to refer appropriately to the licensing of the Corporation or its successor for operation of an AVLIS facility.

In 10 CFR 76.4, "*Definitions*" the term Corporation is amended to include the successor to USEC.

In addition, in conformance with the 1996 legislation, provisions are made in 10 CFR Parts 2 and 76 to allow the NRC to impose civil penalties on the USEC or its successor for failure to comply with regulatory requirements governing the operation of the gaseous diffusion plants regulated under 10 CFR Part 76. Civil penalty authority presently contained in 10 CFR Part 70 would apply to AVLIS licensing. Furthermore, the "General Statement of Policy and Procedures for NRC Enforcement Action" NUREG-1600, is being supplemented to provide examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of gaseous diffusion plant operations. Specific implementing amendments are as follows:

In 10 CFR 2.200(a) concerning the scope of Subpart B of Part 2, a new sentence is added to read as follows: "However, with regard to the holder of a Part 76 Certificate of Compliance or Compliance Plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70." This will clarify that the provisions governing the issuance of an

order or notice of violation to the holder of a certificate of compliance or compliance plan under 10 CFR Part 76 are contained in § 76.70 but the civil penalty procedures in subpart B of Part 2 are applicable to these entities.

In 10 CFR 2.205(a), a reference to the § 76.70(d), "notice of violation," and a reference to the provisions of a 10 CFR Part 76, "certificate of compliance or compliance plan," are added because the Commission now has authority to issue civil penalties to the Corporation for violation of its regulations.

Similarly, in 10 CFR 76.10(b), the last phrase, "except, that the Corporation is not subject to the authority of Section 234 of the Act," is eliminated because the Corporation is now subject to Section 234 of the Act.

10 CFR 76.60 (c)(1) and (d)(1) are removed. These paragraph designations are reserved and the last phrase of § 76.60(i), "provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act" is also eliminated. These provisions on issuing civil penalties are removed to permit the imposition of civil penalties. In 10 CFR 76.72(d), a reference to the new Section 234 civil penalty authority is added.

The 10 CFR 76.131(a)(3) reference to Title XI of the Energy Policy Act of 1992, is eliminated because this act's applicable provisions were amendments to the Atomic Energy Act of 1954. Reference to Section 206 of the Energy Reorganization Act has been relocated from § 76.131(b) to paragraph (b)(2). References to violations under Section 234 of the Atomic Energy Act of 1954, as amended, and specific references to sections of the Act are added as paragraphs (b)(1), (b)(3), and (b)(4) to describe the new civil penalty authority.

A provision is also added stating that the Commission will not issue a license or certificate to the Corporation or its successor if the Commission finds that the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or that issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services. This provision is added to conform with the legislation which includes specific language that restricts issuance of a certificate or a license to the USEC or its successor if the issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. Heretofore, the Commission has not been asked in its regulatory decisions to evaluate whether a proposed action is inimical to the viability of the domestic industries subject to NRC's regulation. Information about the intent of the language is contained in a Senate Committee report on an earlier version of the legislation (S. Rpt. No. 104-173 on S.755, November 17, 1995), which states that the provision is to "guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in such a manner inconsistent with its maintenance as an ongoing uranium enrichment concern." The report further states that no certificate or license should be issued "if in the opinion of the NRC the issuance of such a license or certificate of compliance would be inimical to the common defense and security of the United States or would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances."

To comply with this provision of the 1996 legislation, the NRC staff will evaluate this restriction on certification and licensing based, in part, on the following:

Information required under §§ 70.22 and 76.33 "information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government."

Information to be obtained under a proposed rule (61 FR 40555; August 5, 1996) amending the provisions of 10 CFR Parts 25 and 95 that deal with requirements for access to and protection of classified information. (The Commission expects to adopt this proposed rule as a final rule in January of 1997.) These amendments were proposed to conform the NRC's regulations with the nationally applicable requirements for the protection of and access to classified National Security Information, which have been revised through the issuance of the National Industrial Security Program Operating Manual (NISPOM), published January 1995; Executive Order 12958, "Classified National Security Information," dated April 17, 1995; and Executive Order 12958, "Access to Classified Information," dated August 4, 1995. Specifically, as related to foreign ownership, control, or domination, the NISPOM provides criteria for determining whether U.S. companies handling classified material are under foreign ownership, control, or influence (FOCI). FOCI requirements established in proposed revisions to 10 CFR Part 95 are considered useful to the subject finding the Commission must make under the provisions of the 1996 legislation. This is especially so based upon the sensitive nature of the facilities and USEC's role, and the fact that USEC will have access to classified information and equipment.

Further, the existing regulations (§§ 40.31(b), 70.22(d), and 76.33(d)) reflect NRC authority under the Atomic Energy Act to require that an applicant, licensee, or certificate holder submit additional information concerning issuance of a license or certificate. Therefore, under these provisions USEC also may be required to submit additional information addressing whether issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. The staff is considering whether there are specific additional information needs and will recommend to the Commission whether further amendments to the regulations are warranted. In addition the staff is preparing procedures for developing the required annual report to Congress and guidance for recertification, and developing procedures to consider the issues of foreign ownership and control, and inimicalness to the common defense and security and to a reliable and economical supply of domestic enrichments services. Specific implementing amendments are as follows:

New sections 10 CFR 40.38 and 70.40 entitled "*Ineligibility of certain applicants*," are added to state that the NRC will not issue a license to operate an AVLIS enrichment facility to the Corporation if:

- (1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;
- (2) Issuance would be inimical to the common defense and security of the United States; or
- (3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

A new section 10 CFR 76.22 entitled "*Ineligibility of certain applicants*," is added that states that the NRC will not issue a certificate of compliance to the Corporation under these parts if:

- (1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;
- (2) Issuance would be inimical to the common defense and security of the United States; or
- (3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

Another provision in the legislation eliminates the requirement that the NRC must certify that USEC or its successor's operation of the gaseous diffusion plants is in compliance with NRC regulations each year. Instead, the Commission may determine how frequently the USEC or its successor must submit a recertification application to the NRC. However, NRC must recertify the Corporation's compliance at least every 5 years. The initial certification, granted in a September 19, 1996 Director's decision, was made effective for 2 years to permit most items of USEC's compliance plan to be completed. As part of the certification process, the compliance plan details how the Corporation will achieve compliance with NRC regulations in transition from the operation of the gaseous diffusion plants under the requirements of the Department of Energy to operation under the regulatory authority of the NRC. Subsequent recertification will be based on a number of considerations, including implementation status of compliance plans and certification regulatory experience as determined by the NRC's inspection program. The exact term of each certification will be specified in the certificate. As noted in a Senate Committee report on a previous version of the legislation

(S. Rpt. No. 104-173 on S.755, November 17, 1995, page 31), "With periodic certification, the NRC would have the flexibility to determine the appropriate length of certification, not to exceed five years." Specific implementing amendments are as follows:

10 CFR 76.31 is revised to provide for periodic application for recertification of compliance on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

Accordingly, in 10 CFR 76.35, 76.36, 76.43, 76.45, 76.55, and 76.66 references to annual recertification are removed.

10 CFR 76.68 is revised to provide that the Corporation or its successor will continue to submit revised change pages to their approved application and safety analysis report annually to ensure current plant documentation, even though the requirement for an annual application has been removed.

In addition, in response to the "Rulemaking Plan - USEC Privatization Act," which was made available to the public on the NRC electronic bulletin board, USEC by letter dated November 13, 1996, provided comment concerning the rulemaking action (enclosure 3). In their letter USEC provided proposed revisions to CFR Parts 76, 70, and 40 for the purposes of implementing the USEC Privatization Act, and proposed language to § 76.45 to clarify the agency's intention concerning Director's decision on applications for amendments to the Certificate. USEC also proposed deleting certain sections which in their view are immaterial now that the Director's decision on the initial certification has been issued. With respect to the first item, no new information was provided beyond that which the staff had already considered in this direct final rulemaking. The other USEC proposed revisions are not

included as a part of this limited scope direct final rulemaking as they are not revisions to the Commission's regulations which are required by the legislative amendments to the Act being here codified.

The Commission is proceeding with this rulemaking to amend 10 CFR Parts 2, 40, 70, and 76 as required to implement section 3116 of Pub L. 104-134. To conform with these changes to the Act, the amendments in this rule contain several new and revised AVLIS licensing and gaseous diffusion plant certification requirements specific to the Corporation's and its successor's operation of uranium enrichment facilities.

In summary, the amendments to 10 CFR Chapter I are being made to:

(a) Provide that uranium enrichment facilities will be licensed under 10 CFR Part 70, Domestic Licensing of Special Nuclear Material (See § 70.1);

b) Add and amend where needed the definition of "Corporation" to include the USEC privatized entity (See §§ 40.4, 70.4 and 76.4);

c) Note that the Commission will not issue a license/certificate if the Commission finds that USEC or its successor is under foreign ownership or control or that issuance would be inimical to the common defense and security or to the maintenance of a reliable and economical source of domestic enrichment services (See §§ 40.38, 70.40, and 76.22);

d) Amend the provision concerning periodic recertification for operation (See §§ 76.31, 76.35(n), 76.36(a), 76.43, 76.45(a), 76.55, 76.66 and 76.68(b)); and

e) Note and clarify the authority to issue civil penalties to USEC or its successor for regulatory violations (See §§ 2.200(a), 2.205(a), 76.10(b), 76.60, 76.72(d) and 76.131).

The NRC is also amending the regulations in 10 CFR Part 76 to correct several miscellaneous errors in the regulatory text. These errors in the Code of Federal Regulations text occurred in the process of preparing and printing the final rule published on September 23, 1994 (59 FR 48944). Specifically: in § 76.21(b) the reference to § 40.41 should be to § 40.51; in §§ 76.111 and 76.113 "uncontrolled classified" should be "Unclassified Controlled" Nuclear Information, and in § 76.76(a)(2) the "(c)" should be "(b)." In addition, the definition of "Uranium enrichment plant" is removed from § 76.4 because it is neither needed nor used in Part 76, which is specific to gaseous diffusion plants.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The Bulletin Board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the Bulletin Board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by

selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Procedural Background

The NRC considers this action noncontroversial and routine because it implements specific statutory requirements (Pub. L. 104-134). Therefore, the Commission is approving it without seeking public comments on proposed amendments. This action will become effective on [60 days after publication in the Federal Register]. However, if the NRC receives significant adverse comments by [30 days after publication in the Federal Register], the NRC will withdraw this action and address the significant adverse comments received in response to the revisions published in this Federal Register notice before a final rule becomes effective. The NRC will not initiate a second comment period on this action.

Revision to NUREG-1600

"General Statement of Policy and Procedures for NRC Enforcement Actions"

Concurrently with this Direct Final Rule the Commission is publishing a document elsewhere in this issue of the Federal Register that amends NUREG-

1600, "General Statement of Policy and Procedures for NRC Enforcement Action" which provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the areas of fuel cycle and gaseous diffusion plant operations. The amendment is to Supplement VI, "Fuel Cycle and Materials Operations," which provides additional examples of violations that should be categorized at Severity Levels I, II, III, and IV. In addition, the Enforcement Policy is being amended to establish base civil penalties for GDPs. The policy recognizes that regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance (i.e., actual and potential consequences) and regulatory significance.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement for Direct Final Rule

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0020, -0021, -0009, -0039.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

Changes to 10 CFR Parts 2, 40, 70, and 76 must be made to bring these regulations into conformance with the Act as amended by the "USEC Privatization Act" (Public Law 104-134). The chief benefit to the public, industry, and NRC will be derived from codification of NRC regulations to conform to the changes to the Act. Codification should result in a better understanding of the procedures and requirements for licensing and/or certification of enrichment facilities, and thereby facilitate the process for review of a license application for uranium enrichment facility, and possibly reduce the litigative risk that might result from not having the regulatory basis for health and safety review of the application codified by regulation. The principal cost will be the expenditure of NRC staff resources in codifying

the requirements. This constitutes the regulatory analysis for the direct final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only addresses the Corporation or its successor. The Corporation does not fall within the scope of the definition of "small entities" set forth in 10 CFR 2.810 or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Small Business Regulatory Enforcement Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rules, 10 CFR 50.109 and 76.76, do not apply to this rule. Thus, a backfit analysis is not required for these amendments because they do not involve any provisions that would impose backfits as defined in §§ 50.109(a)(1) and 76.76(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion .

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; and 5 U.S.C. 552 and 553; the Commission is adopting the following amendments to 10 CFR Parts 2, 40, 70, and 76.

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND
ISSUANCE OF ORDERS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, I, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141,

Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a Part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70.

* * * * *

3. In § 2.205, paragraph (a) is revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, or the Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d). The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, Part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to section 234c of the Act.

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PART 40 -- DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 is revised to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term "Corporation" is added to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio,

from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to-
 - (1) The common defense and security of the United States; or
 - (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70 -- DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.1, A new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term "Corporation" is added to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both

of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to-
 - (1) The common defense and security of the United States; or
 - (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76 -- CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349, (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104

Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term "Corporation" is amended to read as follows and the term "Uranium enrichment plant" is removed:

§ 76.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to-

- (1) The common defense and security of the United States; or
- (2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

* * * * *

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund,

must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its periodic application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file periodical applications for renewal, as required by § 76.31.

* * * * *

19. Section 76.43 is revised to read as follows:

§ 76.43 Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) Contents of amendment application. In addition to the application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

* * * * *

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1), and (d)(1), are removed and reserved and paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(c) * * *

(1) [Reserved]

(d) * * *

(1) [Reserved]

* * * * *

(i) The Corporation shall comply with the applicable provisions of 10 CFR part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," as specified in subpart E to this part.

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

* * * * *

(c) If the Corporation does not submit a renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

* * * * *

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

* * * * *

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

* * * * *

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR Part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR Part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b) of this section for backfits which it seeks to impose.

* * * * *

27. Section 76.111 is revised to read as follows:

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation¹ for physical security and material control and accounting are contained in Title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

¹For the purpose of this subpart, the terms "licensee" or "license" used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material-Category I.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended;
- (3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, for violations of:

- (1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;

- (2) Section 206 of the Energy Reorganization Act;
- (3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;
- (4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

Dated at Rockville, Maryland, this ____ day of _____, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

ENCLOSURE 1-B

PROPOSED RULE

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 76

RIN: 3150-AF56

USEC Privatization Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the licensing of uranium enrichment facilities to conform to changes made to the Atomic Energy Act of 1954, as amended (the Act), by the USEC Privatization Act legislation. Although the principal effect of this legislation is to direct the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity, this legislation also amended the Act with respect to NRC certification of gaseous diffusion plants leased by USEC and the licensing of atomic vapor laser isotope separation (AVLIS) technology. The Corporation is responsible for the operation of the two gaseous diffusion plants and the development of the AVLIS technology.

The legislation requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; provides for issuing civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants; prohibits issuance of a license/certificate to the Corporation or its successor if it is owned,

controlled, or dominated by an alien, a foreign corporation, or a foreign government or its issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; and eliminates the requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations each year. The Commission can determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertify USEC's or its successor's compliance with its regulations not less frequently than every five years. The proposed changes to the regulations bring 10 CFR Parts 2, 40, 70, and 76 into conformance with the USEC Privatization Act.

DATE: Comments on the proposed rule must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electric Assess in the Supplementary Information Section.

Copies of comments received may be examined or copied for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6209.

SUPPLEMENTARY INFORMATION:

For additional information see the Direct Final Rule published in the rules section of this Federal Register.

Procedural Background

The NRC considers this action noncontroversial and routine because it implements specific statutory requirements (Public Law 104-134). Therefore, we are publishing this proposed rule concurrently as a Direct Final Rule in the final rule section of this Federal Register. The Direct Final Rule will become effective on [insert 60 days after publication in the Federal Register].

However, if the NRC receives significant adverse comments by (30 days after publication in the Federal Register), the NRC will withdraw the Direct Final Rule and address the significant adverse comments received in response to the revisions. Any significant adverse comments will be addressed in a subsequent final rule on this proposal. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The Bulletin Board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the Bulletin Board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by

typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear

power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion .

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Commission is adopting the following amendments to 10 CFR Parts 2, 40, 70, and 76.

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND
ISSUANCE OF ORDERS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, 1, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section

2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a Part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70.

* * * * *

3. In § 2.205, paragraph (a) is revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, or the Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201

or § 76.70(d). The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, Part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to section 234c of the Act.

* * * * *

PART 40 -- DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 is revised to read as follows:
AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 132, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat.

2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term "Corporation" is added to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to-

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70 -- DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.1, A new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term "Corporation" is added to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to-

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76 -- CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349, (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term "Corporation" is amended to read as follows and the term "Uranium enrichment plant" is removed:

§ 76.4 Definitions.

*

*

*

*

*

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B.

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or

special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to-

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

* * * * *

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its periodic application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file periodical applications for renewal, as required by § 76.31.

* * * * *

19. Section 76.43 is revised to read as follows:

§ 76.43 Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) Contents of amendment application. In addition to the application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

* * * * *

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application

for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1), and (d)(1), are removed and reserved and paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(c) * * *

(1) [Reserved]

(d) * * *

(1) [Reserved]

* * * * *

(i) The Corporation shall comply with the applicable provisions of 10 CFR part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," as specified in subpart E to this part.

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

* * * * *

(c) If the Corporation does not submit a renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

* * * * *

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

* * * * *

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

* * * * *

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR Part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR Part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b) of this section for backfits which it seeks to impose.

* * * * *

27. Section 76.111 is revised to read as follows:

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation¹ for physical security and material control and accounting are contained in Title 10 of the Code of Federal Regulations as

¹For the purpose of this subpart, the terms "licensee" or "license" used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material-Category I.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended;

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, for violations of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;

(2) Section 206 of the Energy Reorganization Act;

(3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;

(4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

Dated at Rockville, Maryland, this _____ day of _____, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

ENCLOSURE 1-C

LINE IN/OUT ATTACHED

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 76

RIN: 3150-AF56

USEC Privatization Act

LINE IN / LINE OUT

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Special nuclear material, Uranium enrichmer' gaseous diffusion.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Commission is adopting the following amendments to 10 CFR Parts 2, 40, 70, and 76.

PART 2 -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs.

161b, I, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a Part 76 certificate of compliance or

compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70.

* * * * *

3. In § 2.205, paragraph (a) is revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, or the Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d). The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, Part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to Section 234c of the Act.

* * * * *

PART 40 -- DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 is revised to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term "Corporation" is added to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the

gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to--
 - (1) The common defense and security of the United States; or
 - (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70 -- DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec.

193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.1, A new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term "Corporation" is added to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the

gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to--
 - (1) The common defense and security of the United States; or
 - (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76 -- CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349, (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term "Corporation" is amended to read as follows and the term "Uranium enrichment plant" is removed:

§ 76.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

* * * * *

~~*Uranium enrichment plant* means:~~

~~(1) Any plant used for separating the isotopes of uranium or enriching uranium in the isotope 235, using gaseous diffusion technology; or~~

~~(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of~~

~~uranium or enriching uranium in the isotope 235, using gaseous diffusion technology.~~

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR Part 2, subpart B; ~~except, that the Corporation is not subject to the authority of Section 234 of the Act.~~

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to-

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Annual Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

~~The Corporation shall file an initial certificate application in 1995,¹ and thereafter, the Corporation shall apply to the Commission each year on or before April 15, for a certificate of compliance in accordance with § 76.36.~~

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

* * * * *

¹ ~~The initial filing for a certificate of compliance must be tendered no later than 6 months after the effective date of this rule or by April 15, 1995, whichever is later.~~

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its ~~periodicannual~~ application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Annual ~~re~~Renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file ~~periodical-annual~~ applications for renewal, as required by § 76.31.

* * * * *

19. Section 76.43 is revised to read as follows:

§ 76.43 Annual ~~d~~Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) Contents of amendment application. In addition to the ~~annual~~ application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

* * * * *

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient ~~annual~~ application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the

application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1), and (d)(1), are removed and reserved and paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(c) * * *

(1) [Reserved]

~~(c)(1) Civil penalties may not be imposed on the Corporation pursuant to § 19.30 of this chapter except for violations of Section 206 of the Energy Reorganization Act.~~

(d) * * *

(1) [Reserved]

~~(d)(1) Civil penalties may not be imposed on the Corporation pursuant to § 20.2401 of this chapter except for violations of Section 206 of the Energy Reorganization Act.~~

* * * * *

(i) The Corporation shall comply with the applicable provisions of 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," as specified in subpart E to this part ~~provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act.~~

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

* * * * *

(c) If the Corporation does not submit an ~~annual~~ renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

* * * * *

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in

accordance with paragraph (a) of this section. These revisions must be submitted ~~annually as specified in § 76.36 of this part~~ before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

* * * * *

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

* * * * *

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR Part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR Part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (eb) of this section for backfits which it seeks to impose.

* * * * *

27. Section 76.111 is revised to read as follows:

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation² for physical security and material control and accounting are contained in Title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as ~~uncontrolled-classified~~ Unclassified Controlled Nuclear Information.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material-Category I.

* * * * *

²For the purpose of this subpart, the terms "licensee" or "license" used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21. Information designated by the U.S. Department of Energy as ~~uncontrolled-classified~~ **Unclassified Controlled** Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended;
- (3) ~~Title XI of the Energy Policy Act of 1992, as amended;~~
- ~~(4) A regulation or order issued pursuant to those Acts.~~

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under **Section 234 of the Atomic Energy Act of 1954, as amended,** or under **Section 1312(e) of the Atomic Energy Act of 1954, as amended,** and **Section 200 of the Energy Reorganization Act of 1974, as amended,** ~~for violations of;~~ ~~and for a violation of Section 206 of the Energy Reorganization Act of 1974, as amended.~~

(1) **Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;**

(2) **Section 206 of the Energy Reorganization Act;**

(3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;

(4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

ENCLOSURE 2

PUBLIC LAW 104-134

* Public Law 104-134
104th Congress

An Act

Making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

Apr. 26, 1996
[H.R. 3019]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 101. For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

Omnibus
Consolidated
Rescissions and
Appropriations
Act of 1996.

AN ACT

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1996, and for other purposes

Departments of
Commerce,
Justice, and
State, the
Judiciary, and
Related Agencies
Appropriation
Act, 1996.

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$74,282,000; including not to exceed \$3,317,000 for the Facilities Program 2000, and including \$5,000,000 for management and oversight of Immigration and Naturalization Service activities, both sums to remain available until expended: *Provided*, That not to exceed 48 permanent positions and 55 full-time equivalent workyears and \$7,477,000 shall be expended for the Department Leadership Program, exclusive of augmentation that occurred in these offices in fiscal year 1995: *Provided further*, That not to exceed 76 permanent positions and 90 full-time equivalent workyears and \$9,487,000 shall be expended for the Offices of Legislative Affairs, Public Affairs and Policy Development: *Provided further*, That the latter three aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.

* Note: This is a typeset print of the original hand enrollment as signed by the President on April 26, 1996. The text is printed without corrections. Footnotes indicate missing or illegible text in the original.

GENERAL PROVISIONS

SEC. 21101. In administering funds provided in this title for domestic assistance, the Secretary of any involved department may waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or any use of the recipient of these funds, except for the requirement related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon finding that such waiver is required to facilitate the obligation and use of such funds would not be inconsistent with the overall purpose of the statute or regulation.

SEC. 21102. No part of any appropriation contained in this title shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Ante, p. 27, 30,
34.

Reports.

SEC. 21103. Notwithstanding section 106 of Public Law 104-99, sections 118, 121, and 129 of Public Law 104-99 shall remain in effect as if enacted as part of this Act.

SEC. 21104. The President may make available funds for assistance activities under titles II and IV of P. L. 104-107, beginning immediately upon enactment of this Act and without regard to monthly apportionment limitations, notwithstanding the provisions of section 518A of such Act, if he determines and reports to the Congress that the effects of the restrictions contained in that section would be that the demand for family planning services would be less likely to be met and that there would be a significant increase in abortions than would otherwise be the case in the absence of such restrictions; *Provided*, That none of the funds appropriated or otherwise made available in P. L. 104-107 may be made available for obligation for the major foreign donor federation of international population assistance except through the regular notifications procedures of the Committees on Appropriations.

This title may be cited as the "Supplemental Appropriations Act of 1996".

TITLE III

RESCISSIONS AND OFFSETS

CHAPTER 1

ENERGY AND WATER DEVELOPMENT

USEC
Privatization Act.

SUBCHAPTER A—UNITED STATES ENRICHMENT CORPORATION
PRIVATIZATION

42 USC 2011
note.

SEC. 3101. SHORT TITLE.

This subchapter may be cited as the "USEC Privatization Act".

42 USC 2297h.

SEC. 3102. DEFINITIONS.

For purposes of this subchapter:

(1) The term "AVLIS" means atomic vapor laser isotope separation technology.

(2) The term "Corporation" means the United States Enrichment Corporation and, unless the context otherwise requires, includes the private corporation and any successor thereto following privatization.

(3) The term "gaseous diffusion plants" means the Paducah Gaseous Diffusion Plant at Paducah, Kentucky and the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio.

(4) The term "highly enriched uranium" means uranium enriched to 20 percent or more of the uranium-235 isotope.

(5) The term "low-enriched uranium" means uranium enriched to less than 20 percent of the uranium-235 isotope, including that which is derived from highly enriched uranium.

(6) The term "low-level radioactive waste" has the meaning given such term in section 2(9) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b(9)).

(7) The term "private corporation" means the corporation established under section 3105.

(8) The term "privatization" means the transfer of ownership of the Corporation to private investors.

(9) The term "privatization date" means the date on which 100 percent of the ownership of the Corporation has been transferred to private investors.

(10) The term "public offering" means an underwritten offering to the public of the common stock of the private corporation pursuant to section 3104.

(11) The "Russian HEU Agreement" means the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993.

(12) The term "Secretary" means the Secretary of Energy.

(13) The "Suspension Agreement" means the Agreement to Suspend the Antidumping Investigation on Uranium from the Russian Federation, as amended.

(14) The term "uranium enrichment" means the separation of uranium of a given isotopic content into 2 components, 1 having a higher percentage of a fissile isotope and 1 having a lower percentage.

SEC. 3103. SALE OF THE CORPORATION.

42 USC 2297h-1.

(a) AUTHORIZATION.—The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer the interest of the United States in the United States Enrichment Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of the operation of the Department of Energy's gaseous diffusion plants, provides for the protection of the public interest in maintaining a reliable and economical domestic source of uranium mining, enrichment and conversion services, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(b) PROCEEDS.—Proceeds from the sale of the United States' interest in the Corporation shall be deposited in the general fund of the Treasury.

SEC. 3104. METHOD OF SALE.

42 USC 2297h-2.

(a) AUTHORIZATION.—The Board of Directors of the Corporation, with the approval of the Secretary of the Treasury, shall transfer ownership of the assets and obligations of the Corporation to the private corporation established under section 3105 (which may be consummated through a merger or consolidation effected in accordance with, and having the effects provided under, the law of the

State of incorporation of the private corporation, as if the Corporation were incorporated thereunder).

(b) **BOARD DETERMINATION.**—The Board, with the approval of the Secretary of the Treasury, shall select the method of transfer and establish terms and conditions for the transfer that will provide the maximum proceeds to the Treasury of the United States and will provide for the long-term viability of the private corporation, the continued operation of the gaseous diffusion plants, and the public interest in maintaining reliable and economical domestic uranium mining and enrichment industries.

(c) **ADEQUATE PROCEEDS.**—The Secretary of the Treasury shall not allow the privatization of the Corporation unless before the sale date the Secretary of the Treasury determines that the method of transfer will provide the maximum proceeds to the Treasury consistent with the principles set forth in section 3103(a).

(d) **APPLICATION OF SECURITIES LAWS.**—Any offering or sale of securities by the private corporation shall be subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the provisions of the Constitution and laws of any State, territory, or possession of the United States relating to transactions in securities.

(e) **EXPENSES.**—Expenses of privatization shall be paid from Corporation revenue accounts in the United States Treasury.

42 USC 2297h-3. **SEC. 3105. ESTABLISHMENT OF PRIVATE CORPORATION.**

(a) **INCORPORATION.**—(1) The directors of the Corporation shall establish a private for-profit corporation under the laws of a State for the purpose of receiving the assets and obligations of the Corporation at privatization and continuing the business operations of the Corporation following privatization.

(2) The directors of the Corporation may serve as incorporators of the private corporation and shall take all steps necessary to establish the private corporation, including the filing of articles of incorporation consistent with the provisions of this subchapter.

(3) Employees and officers of the Corporation (including members of the Board of Directors) acting in accordance with this section on behalf of the private corporation shall be deemed to be acting in their official capacities as employees or officers of the Corporation for purposes of section 205 of title 18, United States Code.

(b) **STATUS OF THE PRIVATE CORPORATION.**—(1) The private corporation shall not be an agency, instrumentality, or establishment of the United States, a Government corporation, or a Government-controlled corporation.

(2) Except as otherwise provided by this subchapter, financial obligations of the private corporation shall not be obligations of, or guaranteed as to principal or interest by, the Corporation or the United States, and the obligations shall so plainly state.

(3) No action under section 1491 of title 28, United States Code, shall be allowable against the United States based on actions of the private corporation.

(c) **APPLICATION OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS.**—Beginning on the privatization date, the restrictions stated in section 207 (a), (b), (c), and (d) of title 18, United States Code, shall not apply to the acts of an individual done in carrying out official duties as a director, officer, or employee of the private corporation, if the individual was an officer or employee of the

Corporation (including a director) continuously during the 45 days prior to the privatization date.

(d) **DISSOLUTION.**—In the event that the privatization does not occur, the Corporation will provide for the dissolution of the private corporation within 1 year of the private corporation's incorporation unless the Secretary of the Treasury or his delegate, upon the Corporation's request, agrees to delay any such dissolution for an additional year.

SEC. 3106. TRANSFERS TO THE PRIVATE CORPORATION.

42 USC 2297h-4.

Concurrent with privatization, the Corporation shall transfer to the private corporation—

- (1) the lease of the gaseous diffusion plants in accordance with section 3107,
- (2) all personal property and inventories of the Corporation,
- (3) all contracts, agreements, and leases under section 3108(a),
- (4) the Corporation's right to purchase power from the Secretary under section 3108(b),
- (5) such funds in accounts of the Corporation held by the Treasury or on deposit with any bank or other financial institution as approved by the Secretary of the Treasury, and
- (6) all of the Corporation's records, including all of the papers and other documentary materials, regardless of physical form or characteristics, made or received by the Corporation.

Records.

SEC. 3107. LEASING OF GASEOUS DIFFUSION FACILITIES.

42 USC 2297h-5.

(a) **TRANSFER OF LEASE.**—Concurrent with privatization, the Corporation shall transfer to the private corporation the lease of the gaseous diffusion plants and related property for the remainder of the term of such lease in accordance with the terms of such lease.

(b) **RENEWAL.**—The private corporation shall have the exclusive option to lease the gaseous diffusion plants and related property for additional periods following the expiration of the initial term of the lease.

(c) **EXCLUSION OF FACILITIES FOR PRODUCTION OF HIGHLY ENRICHED URANIUM.**—The Secretary shall not lease to the private corporation any facilities necessary for the production of highly enriched uranium but may, subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), grant the Corporation access to such facilities for purposes other than the production of highly enriched uranium.

(d) **DOE RESPONSIBILITY FOR PREEXISTING CONDITIONS.**—The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before July 1, 1993, at the gaseous diffusion plants shall remain the sole responsibility of the Secretary.

(e) **ENVIRONMENTAL AUDIT.**—For purposes of subsection (d), the conditions existing before July 1, 1993, at the gaseous diffusion plants shall be determined from the environmental audit conducted pursuant to section 1403(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c-2(e)).

(f) **TREATMENT UNDER PRICE-ANDERSON PROVISIONS.**—Any lease executed between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, under this section shall be deemed to be a contract for purposes of section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)).

(g) **WAIVER OF EIS REQUIREMENT.**—The execution or transfer of the lease between the Secretary and the Corporation or the private corporation, and any extension or renewal thereof, shall not be considered to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

42 USC 2297h-6.

SEC. 3108. TRANSFER OF CONTRACTS.

(a) **TRANSFER OF CONTRACTS.**—Concurrent with privatization, the Corporation shall transfer to the private corporation all contracts, agreements, and leases, including all uranium enrichment contracts, that were—

(1) transferred by the Secretary to the Corporation pursuant to section 1401(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2297c(b)), or

(2) entered into by the Corporation before the privatization date.

(b) **NONTRANSFERABLE POWER CONTRACTS.**—The Corporation shall transfer to the private corporation the right to purchase power from the Secretary under the power purchase contracts for the gaseous diffusion plants executed by the Secretary before July 1, 1993. The Secretary shall continue to receive power for the gaseous diffusion plants under such contracts and shall continue to resell such power to the private corporation at cost during the term of such contracts.

(c) **EFFECT OF TRANSFER.**—(1) Notwithstanding subsection (a), the United States shall remain obligated to the parties to the contracts, agreements, and leases transferred under subsection (a) for the performance of its obligations under such contracts, agreements, or leases during their terms. Performance of such obligations by the private corporation shall be considered performance by the United States.

(2) If a contract, agreement, or lease transferred under subsection (a) is terminated, extended, or materially amended after the privatization date—

(A) the private corporation shall be responsible for any obligation arising under such contract, agreement, or lease after any extension or material amendment, and

(B) the United States shall be responsible for any obligation arising under the contract, agreement, or lease before the termination, extension, or material amendment.

(3) The private corporation shall reimburse the United States for any amount paid by the United States under a settlement agreement entered into with the consent of the private corporation or under a judgment, if the settlement or judgment—

(A) arises out of an obligation under a contract, agreement, or lease transferred under subsection (a), and

(B) arises out of actions of the private corporation between the privatization date and the date of a termination, extension, or material amendment of such contract, agreement, or lease.

(d) **PRICING.**—The Corporation may establish prices for its products, materials, and services provided to customers on a basis that will allow it to attain the normal business objectives of a profit making corporation.

42 USC 2297h-7.

SEC. 3109. LIABILITIES.

(a) **LIABILITY OF THE UNITED STATES.**—(1) Except as otherwise provided in this subchapter, all liabilities arising out of the oper-

ation of the uranium enrichment enterprise before July 1, 1993, shall remain the direct liabilities of the Secretary.

(2) Except as provided in subsection (a)(2) or otherwise provided in a memorandum of agreement entered into by the Corporation and the Office of Management and Budget prior to the privatization date, all liabilities arising out of the operation of the Corporation between July 1, 1993, and the privatization date shall remain the direct liabilities of the United States.

(3) All liabilities arising out of the disposal of depleted uranium generated by the Corporation between July 1, 1993, and the privatization date shall become the direct liabilities of the Secretary.

(4) Any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising from any action taken by any agent or officer of the United States in connection with the privatization of the Corporation is hereby withdrawn.

(5) To the extent that any claim against the United States under this section is of the type otherwise required by Federal statute or regulation to be presented to a Federal agency or official for adjudication or review, such claim shall be presented to the Department of Energy in accordance with procedures to be established by the Secretary. Nothing in this paragraph shall be construed to impose on the Department of Energy liability to pay any claim presented pursuant to this paragraph.

(6) The Attorney General shall represent the United States in any action seeking to impose liability under this subsection.

(b) LIABILITY OF THE CORPORATION.—Notwithstanding any provision of any agreement to which the Corporation is a party, the Corporation shall not be considered in breach, default, or violation of any agreement because of the transfer of such agreement to the private corporation under section 3108 or any other action the Corporation is required to take under this subchapter.

(c) LIABILITY OF THE PRIVATE CORPORATION.—Except as provided in this subchapter, the private corporation shall be liable for any liabilities arising out of its operations after the privatization date.

(d) LIABILITY OF OFFICERS AND DIRECTORS.—(1) No officer, director, employee, or agent of the Corporation shall be liable in any civil proceeding to any party in connection with any action taken in connection with the privatization if, with respect to the subject matter of the action, suit, or proceeding, such person was acting within the scope of his employment.

(2) This subsection shall not apply to claims arising under the Securities Act of 1933 (15 U.S.C. 77a. et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a. et seq.), or under the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities.

SEC. 3110. EMPLOYEE PROTECTIONS.

(a) CONTRACTOR EMPLOYEES.—(1) Privatization shall not diminish the accrued, vested pension benefits of employees of the Corporation's operating contractor at the two gaseous diffusion plants.

(2) In the event that the private corporation terminates or changes the contractor at either or both of the gaseous diffusion plants, the plan sponsor or other appropriate fiduciary of the pension plan covering employees of the prior operating contractor shall

arrange for the transfer of all plan assets and liabilities relating to accrued pension benefits of such plan's participants and beneficiaries from such plant to a pension plan sponsored by the new contractor or the private corporation or a joint labor-management plan, as the case may be.

(3) In addition to any obligations arising under the National Labor Relations Act (29 U.S.C. 151 et seq.), any employer (including the private corporation if it operates a gaseous diffusion plant without a contractor or any contractor of the private corporation) at a gaseous diffusion plant shall—

(A) abide by the terms of any unexpired collective bargaining agreement covering employees in bargaining units at the plant and in effect on the privatization date until the stated expiration or termination date of the agreement; or

(B) in the event a collective bargaining agreement is not in effect upon the privatization date, have the same bargaining obligations under section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) as it had immediately before the privatization date.

(4) If the private corporation replaces its operating contractor at a gaseous diffusion plant, the new employer (including the new contractor or the private corporation if it operates a gaseous diffusion plant without a contractor) shall—

(A) offer employment to non-management employees of the predecessor contractor to the extent that their jobs still exist or they are qualified for new jobs, and

(B) abide by the terms of the predecessor contractor's collective bargaining agreement until the agreement expires or a new agreement is signed.

(5) In the event of a plant closing or mass layoff (as such terms are defined in section 2101(a) (2) and (3) of title 29, United States Code) at either of the gaseous diffusion plants, the Secretary of Energy shall treat any adversely affected employee of an operating contractor at either plant who was an employee at such plant on July 1, 1993, as a Department of Energy employee for purposes of sections 3161 and 3162 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h-7274i).

(6)(A) The Secretary and the private corporation shall cause the post-retirement health benefits plan provider (or its successor) to continue to provide benefits for eligible persons, as described under subparagraph (B), employed by an operating contractor at either of the gaseous diffusion plants in an economically efficient manner and at substantially the same level of coverage as eligible retirees are entitled to receive on the privatization date.

(B) Persons eligible for coverage under subparagraph (A) shall be limited to:

(i) persons who retired from active employment at one of the gaseous diffusion plants on or before the privatization date as vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant; and

(ii) persons who are employed by the Corporation's operating contractor on or before the privatization date and are vested participants in a pension plan maintained either by the Corporation's operating contractor or by a contractor employed

prior to July 1, 1993, by the Department of Energy to operate a gaseous diffusion plant.

(C) The Secretary shall fund the entire cost of post-retirement health benefits for persons who retired from employment with an operating contractor prior to July 1, 1993.

(D) The Secretary and the Corporation shall fund the cost of post-retirement health benefits for persons who retire from employment with an operating contractor on or after July 1, 1993, in proportion to the retired person's years and months of service at a gaseous diffusion plant under their respective management.

(7)(A) Any suit under this subsection alleging a violation of an agreement between an employer and a labor organization shall be brought in accordance with section 301 of the Labor Management Relations Act (29 U.S.C. 185).

(B) Any charge under this subsection alleging an unfair labor practice violative of section 8 of the National Labor Relations Act (29 U.S.C. 158) shall be pursued in accordance with section 10 of the National Labor Relations Act (29 U.S.C. 160).

(C) Any suit alleging a violation of any provision of this subsection, to the extent it does not allege a violation of the National Labor Relations Act, may be brought in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy or the citizenship of the parties.

(b) FORMER FEDERAL EMPLOYEES.—(1)(A) An employee of the Corporation that was subject to either the Civil Service Retirement System (referred to in this section as "CSRS") or the Federal Employees' Retirement System (referred to in this section as "FERS") on the day immediately preceding the privatization date shall elect—

(i) to retain the employee's coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation's retirement system, or

(ii) to receive a deferred annuity or lump-sum benefit payable to a terminated employee under CSRS or FERS, as applicable.

(B) An employee that makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee's Thrift Savings Plan account to a defined contribution plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's defined contribution plan.

(2) The Corporation shall pay to the Civil Service Retirement and Disability Fund—

(A) such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5, United States Code, for those employees who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1);

(B) such additional agency contributions as are determined necessary by the Office of Personnel Management to pay, in combination with the sums under subparagraph (A), the "normal cost" (determined using dynamic assumptions) of retirement benefits for those employees who elect to retain their coverage under CSRS pursuant to paragraph (1), with the concept of "normal cost" being used consistent with generally accepted actuarial standards and principles; and

(C) such additional amounts, not to exceed two percent of the amounts under subparagraphs (A) and (B), as are deter-

mined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the privatization date under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the privatization date (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5, United States Code).

(3) The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5, United States Code, for those employees who elect to retain their coverage under FERS pursuant to paragraph (1).

(4) Any employee of the Corporation who was subject to the Federal Employee Health Benefits Program (referred to in this section as "FEHBP") on the day immediately preceding the privatization date and who elects to retain coverage under either CSRS or FERS pursuant to paragraph (1) shall have the option to receive health benefits from a health benefit plan established by the Corporation or to continue without interruption coverage under the FEHBP, in lieu of coverage by the Corporation's health benefit system.

(5) The Corporation shall pay to the Employees Health Benefits Fund—

(A) such employee deductions and agency contributions as are required by section 8906 (a)–(f) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4); and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5, United States Code, for those employees who elect to retain their coverage under FEHBP pursuant to paragraph (4).

(6) The amounts required under paragraph (5)(B) shall pay the Government contributions for retired employees who retire from the Corporation after the privatization date under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the privatization date, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the privatization date.

42 USC 2297h-9.

SEC. 3111. OWNERSHIP LIMITATIONS.

(a) SECURITIES LIMITATIONS.—No director, officer, or employee of the Corporation may acquire any securities, or any rights to acquire any securities of the private corporation on terms more favorable than those offered to the general public—

(1) in a public offering designed to transfer ownership of the Corporation to private investors,

(2) pursuant to any agreement, arrangement, or understanding entered into before the privatization date, or

(3) before the election of the directors of the private corporation.

(b) OWNERSHIP LIMITATION.—Immediately following the consummation of the transaction or series of transactions pursuant to which 100 percent of the ownership of the Corporation is transferred to private investors, and for a period of three years thereafter,

no person may acquire, directly or indirectly, beneficial ownership of securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation. The foregoing limitation shall not apply to—

- (1) any employee stock ownership plan of the Corporation,
- (2) members of the underwriting syndicate purchasing shares in stabilization transactions in connection with the privatization, or
- (3) in the case of shares beneficially held in the ordinary course of business for others, any commercial bank, broker-dealer, or clearing agency.

SEC. 3112. URANIUM TRANSFERS AND SALES.

42 USC 2297h-
10.

(a) TRANSFERS AND SALES BY THE SECRETARY.—The Secretary shall not provide enrichment services or transfer or sell any uranium (including natural uranium concentrates, natural uranium hexafluoride, or enriched uranium in any form) to any person except as consistent with this section.

(b) RUSSIAN HEU.—(1) On or before December 31, 1996, the United States Executive Agent under the Russian HEU Agreement shall transfer to the Secretary without charge title to an amount of uranium hexafluoride equivalent to the natural uranium component of low-enriched uranium derived from at least 18 metric tons of highly enriched uranium purchased from the Russian Executive Agent under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Secretary shall be based on a tails assay of 0.30 U²³⁵. Uranium hexafluoride transferred to the Secretary pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(2) Within 7 years of the date of enactment of this Act, the Secretary shall sell, and receive payment for, the uranium hexafluoride transferred to the Secretary pursuant to paragraph (1). Such uranium hexafluoride shall be sold—

(A) at any time for use in the United States for the purpose of overfeeding;

(B) at any time for end use outside the United States;

(C) in 1995 and 1996 to the Russian Executive Agent at the purchase price for use in matched sales pursuant to the Suspension Agreement; or,

(D) in calendar year 2001 for consumption by end users in the United States not prior to January 1, 2002, in volumes not to exceed 3,000,000 pounds U₃O₈ equivalent per year.

(3) With respect to all enriched uranium delivered to the United States Executive Agent under the Russian HEU Agreement on or after January 1, 1997, the United States Executive Agent shall, upon request of the Russian Executive Agent, enter into an agreement to deliver concurrently to the Russian Executive Agent an amount of uranium hexafluoride equivalent to the natural uranium component of such uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. The quantity of such uranium hexafluoride delivered to the Russian Executive Agent shall be based on a tails assay of 0.30 U²³⁵. Title to uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall transfer to the Russian Executive Agent upon delivery of such material to the Russian Executive Agent,

with such delivery to take place at a North American facility designated by the Russian Executive Agent. Uranium hexafluoride delivered to the Russian Executive Agent pursuant to this paragraph shall be deemed under U.S. law for all purposes to be of Russian origin. Such uranium hexafluoride may be sold to any person or entity for delivery and use in the United States only as permitted in subsections (b)(5), (b)(6) and (b)(7) of this section.

(4) In the event that the Russian Executive Agent does not exercise its right to enter into an agreement to take delivery of the natural uranium component of any low-enriched uranium, as contemplated in paragraph (3), within 90 days of the date such low-enriched uranium is delivered to the United States Executive Agent, or upon request of the Russian Executive Agent, then the United States Executive Agent shall engage an independent entity through a competitive selection process to auction an amount of uranium hexafluoride or U_3O_8 (in the event that the conversion component of such hexafluoride has previously been sold) equivalent to the natural uranium component of such low-enriched uranium. An agreement executed pursuant to a request of the Russian Executive Agent, as contemplated in this paragraph, may pertain to any deliveries due during any period remaining under the Russian HEU Agreement. Such independent entity shall sell such uranium hexafluoride in one or more lots to any person or entity to maximize the proceeds from such sales, for disposition consistent with the limitations set forth in this subsection. The independent entity shall pay to the Russian Executive Agent the proceeds of any such auction less all reasonable transaction and other administrative costs. The quantity of such uranium hexafluoride auctioned shall be based on a tails assay of 0.30 U^{235} . Title to uranium hexafluoride auctioned pursuant to this paragraph shall transfer to the buyer of such material upon delivery of such material to the buyer. Uranium hexafluoride auctioned pursuant to this paragraph shall be deemed under United States law for all purposes to be of Russian origin.

(5) Except as provided in paragraphs (6) and (7), uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4), may not be delivered for consumption by end users in the United States either directly or indirectly prior to January 1, 1998, and thereafter only in accordance with the following schedule:

Annual Maximum Deliveries to End Users

Year:	(millions lbs. U_3O_8 equivalent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20

(6) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time as Russian-origin natural uranium

in a matched sale pursuant to the Suspension Agreement, and in such case shall not be counted against the annual maximum deliveries set forth in paragraph (5).

(7) Uranium hexafluoride delivered to the Russian Executive Agent under paragraph (3) or auctioned pursuant to paragraph (4) may be sold at any time for use in the United States for the purpose of overfeeding in the operations of enrichment facilities.

(8) Nothing in this subsection (b) shall restrict the sale of the conversion component of such uranium hexafluoride.

(9) The Secretary of Commerce shall have responsibility for the administration and enforcement of the limitations set forth in this subsection. The Secretary of Commerce may require any person to provide any certifications, information, or take any action that may be necessary to enforce these limitations. The United States Customs Service shall maintain and provide any information required by the Secretary of Commerce and shall take any action requested by the Secretary of Commerce which is necessary for the administration and enforcement of the uranium delivery limitations set forth in this section.

(10) The President shall monitor the actions of the United States Executive Agent under the Russian HEU Agreement and shall report to the Congress not later than December 31 of each year on the effect the low-enriched uranium delivered under the Russian HEU Agreement is having on the domestic uranium mining, conversion, and enrichment industries, and the operation of the gaseous diffusion plants. Such report shall include a description of actions taken or proposed to be taken by the President to prevent or mitigate any material adverse impact on such industries or any loss of employment at the gaseous diffusion plants as a result of the Russian HEU Agreement.

President.
Reports.

(c) TRANSFERS TO THE CORPORATION.—(1) The Secretary shall transfer to the Corporation without charge up to 50 metric tons of enriched uranium and up to 7,000 metric tons of natural uranium from the Department of Energy's stockpile, subject to the restrictions in subsection (c)(2).

(2) The Corporation shall not deliver for commercial end use in the United States—

(A) any of the uranium transferred under this subsection before January 1, 1998;

(B) more than 10 percent of the uranium (by uranium hexafluoride equivalent content) transferred under this subsection or more than 4,000,000 pounds, whichever is less, in any calendar year after 1997; or

(C) more than 800,000 separative work units contained in low-enriched uranium transferred under this subsection in any calendar year.

(d) INVENTORY SALES.—(1) In addition to the transfers authorized under subsections (c) and (e), the Secretary may, from time to time, sell natural and low-enriched uranium (including low-enriched uranium derived from highly enriched uranium) from the Department of Energy's stockpile.

(2) Except as provided in subsections (b), (c), and (e), no sale or transfer of natural or low-enriched uranium shall be made unless—

(A) the President determines that the material is not necessary for national security needs,

President.

(B) the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and

(C) the price paid to the Secretary will not be less than the fair market value of the material.

(e) GOVERNMENT TRANSFERS.—Notwithstanding subsection (d)(2), the Secretary may transfer or sell enriched uranium—

(1) to a Federal agency if the material is transferred for the use of the receiving agency without any resale or transfer to another entity and the material does not meet commercial specifications;

(2) to any person for national security purposes, as determined by the Secretary; or

(3) to any State or local agency or nonprofit, charitable, or educational institution for use other than the generation of electricity for commercial use.

(f) SAVINGS PROVISION.—Nothing in this subchapter shall be read to modify the terms of the Russian HEU Agreement.

42 USC 2297h-
11.

SEC. 3113. LOW-LEVEL WASTE.

(a) RESPONSIBILITY OF DOE.—(1) The Secretary, at the request of the generator, shall accept for disposal low-level radioactive waste, including depleted uranium if it were ultimately determined to be low-level radioactive waste, generated by—

(A) the Corporation as a result of the operations of the gaseous diffusion plants or as a result of the treatment of such wastes at a location other than the gaseous diffusion plants, or

(B) any person licensed by the Nuclear Regulatory Commission to operate a uranium enrichment facility under sections 53, 63, and 193 of the Atomic Energy Act of 1954 (42 U.S.C. 2073, 2093, and 2243).

(2) Except as provided in paragraph (3), the generator shall reimburse the Secretary for the disposal of low-level radioactive waste pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs, but in no event more than an amount equal to that which would be charged by commercial, State, regional, or interstate compact entities for disposal of such waste.

(3) In the event depleted uranium were ultimately determined to be low-level radioactive waste, the generator shall reimburse the Secretary for the disposal of depleted uranium pursuant to paragraph (1) in an amount equal to the Secretary's costs, including a pro rata share of any capital costs.

(b) AGREEMENTS WITH OTHER PERSONS.—The generator may also enter into agreements for the disposal of low-level radioactive waste subject to subsection (a) with any person other than the Secretary that is authorized by applicable laws and regulations to dispose of such wastes.

(c) STATE OR INTERSTATE COMPACTS.—Notwithstanding any other provision of law, no State or interstate compact shall be liable for the treatment, storage, or disposal of any low-level radioactive waste (including mixed waste) attributable to the operation, decontamination, and decommissioning of any uranium enrichment facility.

SEC. 3114. AVLIS.

42 USC 2297h-12.

(a) **EXCLUSIVE RIGHT TO COMMERCIALIZE.**—The Corporation shall have the exclusive commercial right to deploy and use any AVLIS patents, processes, and technical information owned or controlled by the Government, upon completion of a royalty agreement with the Secretary.

(b) **TRANSFER OF RELATED PROPERTY TO CORPORATION.**—

(1) **IN GENERAL.**—To the extent requested by the Corporation and subject to the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.), the President shall transfer without charge to the Corporation all of the right, title, or interest in and to property owned by the United States under control or custody of the Secretary that is directly related to and materially useful in the performance of the Corporation's purposes regarding AVLIS and alternative technologies for uranium enrichment, including—

President.

(A) facilities, equipment, and materials for research, development, and demonstration activities; and

(B) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases.

(2) **EXCEPTION.**—Facilities, real estate, improvements, and equipment related to the gaseous diffusion, and gas centrifuge, uranium enrichment programs of the Secretary shall not transfer under paragraph (1)(B).

(3) **EXPIRATION OF TRANSFER AUTHORITY.**—The President's authority to transfer property under this subsection shall expire upon the privatization date.

(c) **LIABILITY FOR PATENT AND RELATED CLAIMS.**—With respect to any right, title, or interest provided to the Corporation under subsection (a) or (b), the Corporation shall have sole liability for any payments made or awards under section 157b.(3) of the Atomic Energy Act of 1954 (42 U.S.C. 2187(b)(3)), or any settlements or judgments involving claims for alleged patent infringement. Any royalty agreement under subsection (a) of this section shall provide for a reduction of royalty payments to the Secretary to offset any payments, awards, settlements, or judgments under this subsection.

SEC. 3115. APPLICATION OF CERTAIN LAWS.

42 USC 2297h-13.

(a) **OSHA.**—(1) As of the privatization date, the private corporation shall be subject to and comply with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(2) The Nuclear Regulatory Commission and the Occupational Safety and Health Administration shall, within 90 days after the date of enactment of this Act, enter into a memorandum of agreement to govern the exercise of their authority over occupational safety and health hazards at the gaseous diffusion plants, including inspection, investigation, enforcement, and rulemaking relating to such hazards.

Contracts.

(b) **ANTITRUST LAWS.**—For purposes of the antitrust laws, the performance by the private corporation of a "matched import" contract under the Suspension Agreement shall be considered to have occurred prior to the privatization date, if at the time of privatization, such contract had been agreed to by the parties in all material terms and confirmed by the Secretary of Commerce under the Suspension Agreement.

(c) ENERGY REORGANIZATION ACT REQUIREMENTS.—(1) The private corporation and its contractors and subcontractors shall be subject to the provisions of section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851) to the same extent as an employer subject to such section.

(2) With respect to the operation of the facilities leased by the private corporation, section 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5846) shall apply to the directors and officers of the private corporation.

SEC. 3116. AMENDMENTS TO THE ATOMIC ENERGY ACT.

(a) REPEAL.—(1) Chapters 22 through 26 of the Atomic Energy Act of 1954 (42 U.S.C. 2297-2297e-7) are repealed as of the privatization date.

(2) The table of contents of such Act is amended as of the privatization date by striking the items referring to sections repealed by paragraph (1).

(b) NRC LICENSING.—(1) Section 11v. of the Atomic Energy Act of 1954 (42 U.S.C. 2014v.) is amended by striking “or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology”.

(2) Section 193 of the Atomic Energy Act of 1954 (42 U.S.C. 2243) is amended by adding at the end the following:

“(f) LIMITATION.—No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections 53, 63, or 1701, if the Commission determines that—

“(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

“(2) the issuance of such a license or certificate of compliance would be inimical to—

“(A) the common defense and security of the United States; or

“(B) the maintenance of a reliable and economical domestic source of enrichment services.”.

(3) Section 1701(c)(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f(c)(2)) is amended to read as follows:

“(2) PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.”.

(4) Section 1702(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2297f-1(a)) is amended—

(1) by striking “other than” and inserting “including”, and

(2) by striking “sections 53 and 63” and inserting “sections 53, 63, and 193”.

(c) JUDICIAL REVIEW OF NRC ACTIONS.—Section 189b. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is amended to read as follows:

“b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code, and chapter 7 of title 5, United States Code:

"(1) Any final order entered in any proceeding of the kind specified in subsection (a).

"(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

"(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

"(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws."

(d) CIVIL PENALTIES.—Section 234 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2282(a)) is amended by—

(1) striking "any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109" and inserting: "any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701"; and

(2) by striking "any license issued thereunder" and inserting: "any license or certification issued thereunder".

(e) REFERENCES TO THE CORPORATION.—Following the privatization date, all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

42 USC 2297
note.

SEC. 3117. AMENDMENTS TO OTHER LAWS.

(a) DEFINITION OF GOVERNMENT CORPORATION.—As of the privatization date, section 9101(3) of title 31, United States Code, is amended by striking subparagraph (N) as added by section 902(b) of Public Law 102-486.

(b) DEFINITION OF THE CORPORATION.—Section 1018(1) of the Energy Policy Act of 1992 (42 U.S.C. 2296b-7(1)) is amended by inserting "or its successor" before the period.

SUBCHAPTER B

SEC. 3201. BONNEVILLE POWER ADMINISTRATION REFINANCING.

16 USC 838f.

(a) DEFINITIONS.—

For the purposes of this section—

(1) "Administrator" means the Administrator of the Bonneville Power Administration;

(2) "capital investment" means a capitalized cost funded by Federal appropriations that—

(A) is for a project, facility, or separable unit or feature of a project or facility;

(B) is a cost for which the Administrator is required by law to establish rates to repay to the United States Treasury through the sale of electric power, transmission, or other services;

(C) excludes a Federal irrigation investment; and

(D) excludes an investment financed by the current revenues of the Administrator or by bonds issued and sold, or authorized to be issued and sold, by the

"(1) Any final order entered in any proceeding of the kind specified in subsection (a).

"(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

"(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

"(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws."

(d) CIVIL PENALTIES.—Section 234 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2282(a)) is amended by—

(1) striking "any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109" and inserting: "any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701"; and

(2) by striking "any license issued thereunder" and inserting: "any license or certification issued thereunder".

(e) REFERENCES TO THE CORPORATION.—Following the privatization date, all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

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ENCLOSURE 3

SUPPLEMENT TO NUREG-1600

NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to modify Supplement VI, "Fuel Cycle and Materials Operations." This amendment is warranted to reflect experience gained through fuel cycle enforcement actions and as a result of the Commission's recently designated responsibility for jurisdiction over the Gaseous Diffusion Plants (GDPs). In addition, the Enforcement Policy is being amended to establish base civil penalties for GDPs. By a separate action published in this issue in the Federal Register, the Commission has issued a final rule amending the current regulations that govern GDPs. The revision to the Enforcement Policy reflects those amendments.

DATES: This amendment is effective on [Date of Publication in the Federal Register]. Comments are due on or before [30 days after publication in the Federal Register].

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

The Commission's Enforcement Policy was first issued on September 4, 1980. The Enforcement Policy is published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions (60 FR 34381; June 30, 1995)." The Enforcement Policy has been amended on a number of occasions, most recently on October 18, 1996 (61 FR 54461). As a result of experience gained through fuel cycle enforcement actions and amendments to 10 CFR Part 76 being published today as a final regulation, an amendment to the Enforcement Policy is warranted to provide guidance on categorizing potential violations of 10 CFR Part 76 and establish base civil penalties for violation of Part 76. This amendment to the Enforcement Policy is being issued concurrently with the new rule.

Base Civil Penalties

Table 1A of the policy, which establishes base civil penalties for different types of licensees, is being modified to add GDPs to category "a." The amended table will provide that the base civil penalty for a Severity Level I violation of the Commission's requirements by a GDP will be at the statutory limit of \$110,000. In accordance with Table 1B, base civil penalties for Severity Level II and III violations are lesser amounts. In determining the proper civil penalty amount, the Commission considered the structures of these tables, which generally take into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration.

Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and to workers receive higher civil penalties. In the case of GDPs, there are large numbers of workers at the sites, significant source term present (i.e., inventory of licensed material), and various chemical and toxic substances used as part of the GDPs operations. Therefore, in the event of an accident, there is the potential for significant radiological and non-radiological hazards to members of the public, including workers, and the environment.

With regard to the secondary factor of ability to pay, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts the licensee or certificate holder out of business¹ or adversely

¹ Orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities.

affects a licensee's or certificate holder's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amount of penalties take into account a licensee's or certificate holder's ability to pay. In this case, issuing a civil penalty of less than \$110,000 to the Corporation for a significant violation would be disproportionate to the Corporation's significant revenues. In other words, a civil penalty of \$110,000 for a Severity Level I violation would be financially appropriate, but not financially crippling. In addition, a penalty based on this amount should get more attention from the Corporation and should have a greater deterrent effect.

Given the financial resources of GDPs, it is appropriate to utilize significant civil penalties to provide an effective deterrence from violating the Commission's requirements such that the likelihood of performance necessitating a shutdown order would be minimal. Accordingly, a base civil penalty of \$110,000 is appropriate in view of the potential consequences during an accident and the ability to pay. In addition, establishing the base civil penalty at the statutory limit would provide, at the outset, a clear message concerning the cost of noncompliance and additional motivation to maintain safety and compliance.

Severity Levels

The policy recognizes that regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement

process. In considering the significance of a violation, the staff considers the technical significance (i.e., actual and potential consequences) and regulatory significance. Supplement VI, "Fuel Cycle and Materials Operations," is being amended to provide additional examples for categorizing the severity levels of violations.

The changes are:

Severity Level I

1. Example A.5, which is being added to Supplement VI, is consistent with Supplement I guidance. This example is applicable for the Gaseous Diffusion Plants (GDPs) because other fuel facilities do not have Technical Safety Requirements (TSRs). Safety limits are those bounds within which the process variables must be maintained for adequate control of the operation and that must not be exceeded in order to protect the integrity of the physical system that is designed to guard against the uncontrolled release of radioactivity.

2. Example A.6 is being added to Supplement VI to emphasize that a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not, is of very significant regulatory concern. This concern exists because an actual impact to the health and safety of the public or workers has occurred from activities related to the processing of radioactive material.

Severity Level II

1. Example B.4 is being added to Supplement VI to emphasize that, although less significant than Example A.3 in Supplement VI, the absence of all the criticality safety controls for a single anticipated or unanticipated nuclear criticality scenario is of very significant regulatory concern when the availability of fissile material makes a nuclear criticality accident possible.

2. Example B.5 is being added to Supplement VI to underscore that events which do not involve actual significant injuries or loss of life, but reasonably could have if circumstances had been different, are considered of very significant regulatory concern.

Severity Level III

1. Example C.5 is being modified in Supplement VI so that it is consistent with Supplement IV guidance. The NRC considers that a substantial potential for exposures, radiation levels, contamination levels, or releases (including releases of toxic material) caused by the failure to comply with NRC regulations or with procedures established to comply with license conditions to be a significant regulatory concern because it could have serious consequences to the public and licensee employees.

2. Example C.12 is being added to Supplement VI to emphasize that the failure of a certified facility to comply with a limiting condition for operation is considered a significant regulatory concern. This example is similar to Supplement I guidance and has been selected for the GDPs because other fuel cycle facilities do not have TSRs.

3. Example C.13 is being added to Supplement VI to emphasize that the loss of defense-in-depth over licensed or certified activities is considered a significant regulatory concern. This example is consistent with Supplement I guidance and is applicable to both fuel cycle and gaseous diffusion operations.

4. Example C.14, which is consistent with Supplement I guidance, is being added to Supplement VI. This example is generally applicable to the fuel cycle facilities.

5. Example C.15 is being added to Supplement VI. The failure to meet the requirements of 10 CFR 76.68 is significant because of the importance of certificate holders using the required process for maintaining and operating the facilities in accordance with the design and procedures described in their safety analysis report when there is uncertainty as to whether an unreviewed safety question is present. An after-the-fact evaluation that demonstrates that an unreviewed safety question was not involved would, in general, not mitigate the regulatory significance of failing to perform an appropriate evaluation prior to implementation of the change.

6. Example C.16 is being added to Supplement VI to emphasize that adequate control over vendors or contractors performing safety-related work or providing safety-related services is a significant regulatory concern. This example amplifies the NRC's concern that all safety-related activities, whether performed by the certificate holder or by one of its contractors, be conducted in accordance with the requirements in the application, TSRs and certificates.

7. Example C.17, which is consistent with the Supplement I guidance, is being added to Supplement VI. This example points out that equipment failures

caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient is a significant regulatory concern.

8. Example C.18 is being added to Supplement IV. This example indicates that the absence of all but one criticality safety control for a single anticipated or unanticipated nuclear criticality scenario is a significant regulatory concern when a critical mass of fissile material was present or reasonably available, because a nuclear criticality accident was possible.

Severity Level IV

1. Although less significant than the above examples, examples D.5 through D.8 are being added to Supplement VI to stress that such failures are more than a minor concern because they could lead to a more serious concern if left uncorrected.

Paperwork Reduction Act Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, Table 1A, Category a., and Supplement VI, "Fuel Cycle and Materials Operations," of the NRC Enforcement Policy are amended as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

* * * * *

VI. ENFORCEMENT ACTIONS

* * * * *

B. Civil Penalty

TABLE 1A--BASE CIVIL PENALTIES

a.	Power reactors and gaseous diffusion plants.....	\$110,000
b.	Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c.	Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers.....	\$11,000
d.	Research reactors, academic, medical, or other material licensee ¹	\$5,500

¹ This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

* * * * *

SUPPLEMENT VI--FUEL CYCLE AND MATERIALS OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle, gaseous diffusion plants, and materials operations.

A. *Severity Level I* - Violations involving for example:

* * * * *

3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or
6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. *Severity Level II* - Violations involving for example:

* * * * *

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF_6 cylinder by unapproved methods).

C. *Severity Level III* - Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;

* * * * *

5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

* * * * *

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or

replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient; or

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible.

D. *Severity Level IV* - Violations involving for example:

* * * *

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by Section 35.32;

4. A failure to keep the records required by Sections 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

* * * * *

Dated at Rockville, Maryland, this ____ day of _____ 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

ENCLOSURE 4

USEC LETTER



United States
Enrichment Corporation

United States
Enrichment Corporation

2 Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

Tel: (301) 564-3200
Fax: (301) 564-3201

November 13, 1996

Mr. Charles W. Nilsen
US Nuclear Regulatory Commission
Two White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

SERIAL: GDP 96-0195

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
Docket Nos. 70-7001 and 70-7002
Direct Final Rulemaking - Part 76

This letter is in response to the posting on FedWorld, the NRC's electronic bulletin board, of the "Rulemaking Plan - USEC Privatization Act" for information and comment. The United States Enrichment Corporation (USEC) is pleased to provide proposed revisions to 10 CFR Parts 76, 70 and 40 for the purposes of implementing the USEC Privatization Act signed into law by President Clinton on April 26, 1996.

In addition to these revisions, we have also proposed language to § 76.45 to clarify the agency's intention concerning Director's decisions on applications for amendments to the Certificate. This proposed clarification is consistent with the process followed by the agency concerning decisions on license amendment requests for nuclear power plants. Finally, we have also proposed deleting certain sections which are immaterial now that the Director's decision on the initial certification has been issued.

We would be pleased to discuss these proposed revisions and respond to any questions. Please contact me or Ms. Lisamarie Jarriel at (301) 564-3247.

Sincerely,

Robert L. Woolley
Nuclear Regulatory Assurance and Policy Manager

Enclosure

UNITED STATES ENRICHMENT CORPORATION

Comments

on

NRC's Rulemaking Plan - USEC Privatization Act

Section

Proposed Revision

10 CFR 76

- § 76.31 "The Corporation shall . . . and therefore, the Corporation shall apply to the Commission ~~each year on or before April 15~~ periodically, as determined by the Commission, but not less than every 5 years, for renewal of a certificate of compliance in accordance with § 76.36. Any certificate of compliance issued by the Commission shall specify the date by which the next application is due."
- § 76.36 "~~§ 76.36 Annual renewals~~ Renewal of certificates.
- "(a) After issuance by the Commission of . . . the Corporation shall periodically file an ~~annual~~ application for renewal, . . ."
- § 76.43 "~~§ 76.43 Annual~~ Date for decision."
- § 76.45 "(a) *Contents of amendment application.* In addition to ~~the annual~~ an application for ~~certification~~ renewal of a certificate submitted . . ."
- "(b) *Director's decision.* Upon receipt . . . the Director will, after appropriate review, issue a decision pursuant to subpart C of this part, ~~except that Director's decisions on applications for amendments will be effective upon issuance.~~ Such decisions will become final as prescribed in § 76.62(c)."
- § 76.55 "In any case in which the Corporation has timely filed a sufficient ~~annual~~ application for renewal of a certificate . . . does not expire until the application for ~~a certificate of compliance~~ renewal has been finally determined . . ."
- § 76.60 "(a) The Corporation shall . . .
- "(b) The Corporation shall not be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.
- "(c) Certification shall not be inimical to the maintenance of a reliable and economic domestic source of enrichment services.
- "(bd) The Corporation shall . . .

Section #

Proposed Revision

10 CFR 76 (cont.)

§ 76.60 (cont.)

"(ee) The Corporation shall comply with the applicable provisions of 10 CFR part 19, "Notices, Instructions and Reports To Workers: Inspection and Investigations," ~~with the following modifications:~~

~~—(1) Civil penalties may not be imposed on the Corporation pursuant to Sec. 19.30 of this chapter except for violations of Section 206 of the Energy Reorganization Act.~~

~~—(2) The Corporation shall post NRC Form 3 not later than the date of Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance, during the term of the certificate, and for 30 days following certificate termination.~~

"(df) The Corporation shall comply with the applicable provisions of 10 CFR part 20, "Standards For Protection Against Radiation," ~~with the following modifications:~~

~~—(1) Civil penalties may not be imposed on the Corporation pursuant to Sec. 20.2401 of this chapter except for violations of section 206 of the Energy Reorganization Act.~~

~~—(2) The Corporation shall comply with the requirements in this part not later than the date of the Director's decision on the initial certificate of compliance and/or as specified in an approved plan for achieving compliance.~~

"(eg) The Corporation shall comply with the applicable provisions of 10 CFR part 21, "Reporting of Defects and Noncompliance," ~~with the following modifications:~~

~~—(1) The Corporation shall comply with the requirements in Secs 21.6 and 21.21 not later than the date of the Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance.~~

~~—(2) Under Sec. 21.31, procurement documents issued by the Corporation after it submits the initial application for a certificate of compliance must specify that the provisions of 10 CFR part 21 apply.~~

"(fh) The Corporation shall . . .

"(gi) The Corporation shall . . .

"(hj) The Corporation shall . . .

"(ik) The Corporation shall comply with the applicable provisions of 10 CFR part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," as specified in subpart E to this part, ~~provided, however, that civil penalties shall not be imposed on the Corporation pursuant to Sec. 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act."~~

§ 76.66

"(c) If the Corporation does not submit ~~an annual~~ a timely renewal application under § 76.376..."

Section #

Proposed Revision

10 CFR 76 (cont.)

- § 76.72 "(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended,"
- § 76.131 "(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, and for a violation of Section 206 of the Energy Reorganization Act of 1974, as amended: 234 of the Atomic Energy Act:
- (1) For violations of any licensing or certification provision of:
 - (i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended,
 - (ii) Section 206 of the Energy Reorganization Act;
 - (iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;
 - (iv) Any term, condition, or limitation of any license or certificate issued under the sections specified in paragraph (b)(1)(i) of this section.
 - (2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

10 CFR PART 70

- § 70.4 "*Uranium enrichment facility* means:
- (1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235 including a facility using atomic vapor or laser isotope separation technology except. . ."

10 CFR PART 40

- § 40.4 "*Uranium enrichment facility* means:
- (1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235 including a facility using atomic vapor laser isotope separation technology except. . ."

ENCLOSURE 5

PUBLIC ANNOUNCEMENT

NRC REVISES REGULATIONS FOR URANIUM ENRICHMENT FACILITIES
OPERATED BY USEC OR ITS SUCCESSOR

The Nuclear Regulatory Commission is revising its regulations for uranium enrichment facilities operated by the United States Enrichment Corporation (USEC) to be consistent with provisions of the USEC Privatization Act.

The principal effect of the act, which was signed into law on April 26, is to require the government-owned USEC to sell its assets to a private company.

The act also changes the way uranium enrichment facilities operated by USEC or its successor are to be certified or licensed by the NRC. NRC has therefore changed its regulations to:

- (1) Incorporate authority granted by the legislation to impose civil penalties on USEC or its successor if NRC requirements are violated.
- (2) Specify that the Commission will not issue a certificate or license to a foreign-owned or dominated corporation, and will not issue a certificate or a license if it would be inimical to the common defense and security of the United States or the maintenance of a reliable and economical domestic source of enrichment services.
- (3) Revise the frequency with which the operator of the existing gaseous diffusion plants must apply to NRC for a certificate of compliance with NRC regulations. Currently the

operator must apply for recertification annually. The revisions state that the operator must apply for a new certificate of compliance before April 15 of the year specified by NRC, but at least every five years.

(4) Establish the licensing process for atomic vapor laser isotope separation enrichment facilities as a single-step process similar to the one used for nuclear materials licenses, rather than the two-step process used for nuclear power plants.

The revised regulations will be effective on _____ (60 days after publication of a Federal Register notice on _____), unless significant adverse comments are received by _____ (30 days after the Federal Register notice).

The NRC is also amending its policy statement related to enforcement actions to reflect the new authority to issue civil penalties for the gaseous diffusion plants. The maximum for the most severe violations of NRC requirements will be \$110,000 for each violation, each day.

Interested persons may submit written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 02555-0001, Attention: Docketing and Service Branch. Comments may also be submitted electronically, as described in the Federal Register notice.

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ENCLOSURE 6

CONGRESSIONAL COMMITTEE LETTERS



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

Mr. Robert P. Murphy
General Counsel
General Accounting Office
Room 7175
441 G Street, NW
Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a direct final rule amending its regulations to conform the licensing of uranium enrichment facilities to changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion uranium enrichment plants, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of enrichment using AVLIS technology, and certification of the uranium enrichment operations at the two gaseous diffusion plants. To implement these amendments to the Act, this final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76, and to the NRC Enforcement Policy (NUREG-1600).

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule, which is being transmitted to the Office of the Federal Register for publication. Neither a Regulatory Flexibility Certification nor a Regulatory Analysis has been prepared for this minor, nonsubstantive amendment which has no economic impact on NRC licensees or the public. This final rule is scheduled to become effective 60 days after publication in the Federal Register unless significant adverse comments are received. In that case, the NRC will withdraw this action and address the significant adverse comments received before a final rule becomes effective.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Final Rule



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Al Gore
President of the United
States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a direct final rule amending its regulations to conform the licensing of uranium enrichment facilities to changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion uranium enrichment plants, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of enrichment using AVLIS technology, and certification of the uranium enrichment operations at the two gaseous diffusion plants. To implement these amendments to the Act, this final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76, and to the NRC Enforcement Policy (NUREG-1600).

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Final Rule



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

Honorable Newt Gingrich
Speaker of the United States
House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a direct final rule amending its regulations to conform the licensing of uranium enrichment facilities to changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion uranium enrichment plants, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of enrichment using AVLIS technology, and certification of the uranium enrichment operations at the two gaseous diffusion plants. To implement these amendments to the Act, this final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76, and to the NRC Enforcement Policy (NUREG-1600).

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule, which is being transmitted to the Office of the Federal Register for publication. Neither a Regulatory Flexibility Certification nor a Regulatory Analysis has been prepared for this minor, nonsubstantive amendment which has no economic impact on NRC licensees or the public. This final rule is scheduled to become effective 60 days after publication in the Federal Register unless significant adverse comments are received. In that case, the NRC will withdraw this action and address the significant adverse comments received before a final rule becomes effective.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Final Rule



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the subcommittee is a copy of a final amendment to 10 CFR Parts 2, 40, 70, and 76 to be published in the Federal Register.

The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the licensing of uranium enrichment facilities to changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion uranium enrichment plants, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of enrichment using AVLIS technology, and certification of the uranium enrichment operations at the two gaseous diffusion plants. To implement these amendments to the Act, this direct final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76, and to the NRC Enforcement Policy (NUREG-1600).

Neither a Regulatory Flexibility Certification nor a Regulatory Analysis has been prepared for this minor, nonsubstantive amendment which has no economic impact on NRC licensees or the public. This final rule is scheduled to become effective 60 days after publication in the Federal Register unless significant adverse comments are received. In that case, the NRC will withdraw this action and address the significant adverse comments received before a final rule becomes effective.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Final Rule

cc: Senator Bob Graham



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for the information of the subcommittee is a copy of a final amendment to 10 CFR Parts 2, 40, 70, and 76 to be published in the Federal Register.

The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the licensing of uranium enrichment facilities to changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion uranium enrichment plants, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of enrichment using AVLIS technology, and certification of the uranium enrichment operations at the two gaseous diffusion plants. To implement these amendments to the Act, this direct final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76, and to the NRC Enforcement Policy (NUREG-1600).

Neither a Regulatory Flexibility Certification nor a Regulatory Analysis has been prepared for this minor, nonsubstantive amendment which has no economic impact on NRC licensees or the public. This final rule is scheduled to become effective 60 days after publication in the Federal Register unless significant adverse comments are received. In that case, the NRC will withdraw this action and address the significant adverse comments received before a final rule becomes effective.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Final Rule

cc: Representative Frank Pallone

ENCLOSURE 7

MAJOR RULE

AGENCY: Nuclear Regulatory Commission

TITLE OF ACTION: USEC Privatization Act

LEVEL OF SIGNIFICANCE: Not a major rule

UPCOMING ACTION: Final rule

IDENTIFICATION NUMBER: 3150-AF56

**ESTIMATED DATE OF
ISSUANCE:** December 1996

**STATUTORY OR
JUDICIAL DEADLINE:** None

DESCRIPTION OF ACTION:

This final rule amends the Nuclear Regulatory Commission's regulations concerning the licensing of uranium enrichment facilities to reflect changes made to the Atomic Energy Act of 1954, as amended (the Act) by Public Law 104-134. Included within the legislation is a subchapter entitled the "USEC Privatization Act," which among other things, directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of the Corporation will be responsible for the operation of the two gaseous diffusion facilities, known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, this legislation amended the Act with respect to the NRC licensing of AVLIS enrichment and certification of the two gaseous diffusion uranium enrichment operations. This final rule makes several conforming changes to 10 CFR Parts 2, 40, 70, and 76 to implement the amendments to the Act. Conforming changes are also being made to the NRC Enforcement Policy (NUREG-1600).

A Regulatory Flexibility Certification has not been prepared for this minor, nonsubstantive amendment which has no economic impact on NRC licensees or the public. A Regulatory Analysis statement is contained in the final rule.