

POLICY ISSUE  
(Notation Vote)

January 2, 2002

SECY-02-0002

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations

SUBJECT: REVISION OF GASEOUS DIFFUSION PLANT  
RECERTIFICATION STANDARD REVIEW PLAN CHAPTER ON  
FOREIGN OWNERSHIP AND FINANCIAL REQUIREMENTS

PURPOSE:

The purpose of this paper is to request guidance on revising Chapter 16 on foreign ownership and financial requirements in the draft "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants," NUREG-1671 (SRP).

BACKGROUND

In a staff requirements memorandum (SRM) dated October 29, 1996, the Commission instructed the staff to formulate a process to address certain mandates of the U.S. Enrichment Corporation (USEC) Privatization Act regarding certification of USEC or its private corporation successor. In response to this SRM, the staff provided SECY-97-071, which included a draft SRP chapter on foreign ownership and financial requirements. Further Commission guidance on content of the SRP chapter on foreign ownership and financial requirements was provided in SRMs dated June 10, 1997, and November 24, 1997.

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The February 1999 draft NUREG-1671 guidance applicable to “reliable and economical” reviews (see Attachment 1) provides for reviews that would be undertaken for (1) routine recertifications; (2) for changes to the previous review basis; (3) for changes in ownership or control; and (4) for changes applicable to certificate conditions on foreign ownership. Detailed financial and business characteristics analyses (similar to those performed for USEC in 2000) would be performed if USEC, or other entities taking ownership or control, do not have investment-grade corporate bond ratings. These analyses would each require about \$150K in technical assistance resources and 0.5 full-time equivalent (FTE).

On September 11, 2000, Chairman Meserve provided Representative Thomas Bliley with the Commission’s findings on the staff’s financial review of USEC. In the letter, Chairman Meserve stated that the “reliable and economical” concern reflected in Section 193(f)(2)(B) of the Atomic Energy Act of 1954, as amended, is principally directed to the possibility of foreign entities gaining control and undermining United States domestic enrichment capabilities in the privatized USEC. He also added that it is not clear that assessments and findings on the “reliable and economical” issue are a recurring obligation that needs to be addressed at the time of routine recertification for the gaseous diffusion plants or in connection with other events that do not involve a change in ownership.

## DISCUSSION

The staff is proposing to revise Chapter 16 of the draft “Standard Review Plan for the Recertification of the Gaseous Diffusion Plants,” NUREG-1671 consistent with the Chairman’s September 11, 2000, letter to Congressman Bliley. The staff did not consider the issue of “reliable and economical” as part of its review of the recent Paducah High Assay Upgrade Certification Amendment. There are three primary alternatives that could be used for these revisions (see summary table in Attachment 2). All of these options are based on the need to focus principally on the possibility of foreign entities gaining control and undermining U.S. domestic enrichment capabilities. The triggers for each of these actions to perform a reliable and economical review would be for changes in ownership or control consistent with 10 CFR 76.65<sup>1</sup>. In addition, if a report is made pursuant to the certificate conditions related to foreign ownership and control (Conditions 11 and 12 of the Paducah and Portsmouth Certificates), a review would be conducted to determine if there was a change in control that requires a certification to be issued pursuant to 10 CFR 76.65<sup>2</sup>, in which case a reliable and economical review would be performed. The alternatives for revising Chapter 16 of the SRP are:

1. Option 1 - Business and Financial Review. This option would change the triggers for review and focus the purpose of the review. The substance of the review in the February 1999 draft NUREG-1671 applicable to “reliable and economical” reviews would not change. The SRP would be modified to incorporate revised triggers. The purpose of the review would be to determine if the change in ownership or control would likely result in operating the gaseous diffusion plants in a manner that would undermine the

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<sup>1</sup>These triggers are consistent with the November 14, 2001, Commission decision in U.S. Enrichment Corporation (Paducah, Kentucky), CLI-01-23.

<sup>2</sup>The review would focus on the foreign ownership process in the NUREG-1671 SRP which is consistent with the guidance for reactors in “Final Standard Review Plan on Foreign Ownership, Control and Domination” issued on September 28, 1999 (64FR 52355).

U.S. domestic enrichment capability<sup>3</sup>. These analyses would each require about \$150K in technical assistance resources and 0.5 FTE.

2. Option 2 - Financial Aspects of Health and Safety Review. This option would change the triggers for review and would change the “reliable and economical” considerations to be similar to 10 CFR Part 70 financial qualification reviews oriented to ensuring health and safety. The “reliable and economical” review would be undertaken only for changes in ownership or control. The SRP would be modified to incorporate the trigger changes and adopt the guidance for financial qualification reviews in the Part 70 SRP (see Attachment 3). Financial qualification reviews are reviews of general, not detailed, financial statements and business plans, and would be oriented to ensuring that sufficient financial resources would be available to conduct health and safety programs so that the U.S. domestic enrichment capacity will not be undermined. Under this option, a financial qualification review could be conducted by NRC staff, without technical assistance support, for about 0.2 FTE.
3. Option 3 - Foreign Ownership and Control Review. This option would change the triggers for review and would redefine “reliable and economical” to apply only to foreign ownership. The financial and business characteristics review of option 1 would be eliminated, since “reliable and economical” would be subsumed by the foreign ownership reviews. Under this option, no detailed financial or business analyses or financial qualification reviews would be performed. The SRP would be modified accordingly.

Upon receiving Commission direction, the staff will revise Chapter 16 of the SRP and provide the revisions to the Commission for review. After Commission approval, the staff will issue a Federal Register Notice indicating that changes have been made to Chapter 16. Because the Commission will have provided direction on the revisions, there is no need to request public comment.

## RESOURCES

Resources to apply the existing SRP under the status quo option or to revise and apply the SRP under Options 1 and 2 are not currently factored into the Fiscal Year (FY) 2003 budget but would be reprogrammed to accommodate the option selected by the Commission. Resources to implement Option 3 will be available as part of the routine fuel facility budget for FY 2003.

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<sup>3</sup>While the focus is principally on foreign interests, domestic interests can also undermine the domestic industry. For example, the prohibition could reach a domestic entity seeking to purchase the right to operate the GDPs with the intent to close both plants, because the entity opposed the nuclear option or does not want to compete with the nuclear option, thereby undermining the domestic enrichment capability of the United States. The economic review would provide evidence that the entity intended to maintain a domestic enrichment capability by demonstrating that it has the financial capacity to operate the facility.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

*/RA/*

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Executive Director  
for Operations

Attachments:

1. Standard Review Plan, Chapter 16.0 (Status Quo)
2. Summary Table Options
3. Draft Standard Review Plan (Option 2)

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**ADAMS Accession Numbers:**

Package: ML010790537  
OCM Paper: ML010790536  
Attachment 1: ML011230582  
Attachment 2: ML011030303  
Attachment 3: ML011230542

DOCUMENT NAME: G:\SPB\TCJ\GDPSRP16COMM2.WPD

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