



December 20, 2012
AET 12-0061

ATTN: Document Control Desk
Ms. Catherine Haney, Director
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

American Centrifuge Plant and Lead Cascade Facility
Docket Numbers 70-7004 and 70-7003; License Numbers SNM-2011 and SNM-7003
Exemption Request from Requirements of 10 *Code of Federal Regulations* 95.57(c) – Security-Related Information, Official Use Only, and Export Controlled Information

**INFORMATION TRANSMITTED HERewith IS PROTECTED FROM PUBLIC
DISCLOSURE AS CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION
AND/OR TRADE SECRETS PURSUANT TO 10 CFR 2.390 AND 9.17(a)(4)
AND
INFORMATION TRANSMITTED HERewith IS PROTECTED FROM
DISCLOSURE PURSUANT TO 10 CFR PART 810**

Dear Ms. Haney:

Purpose

The purpose of this letter is request an exemption from the requirements of 10 *Code of Federal Regulations* (CFR) 95.57(c) for the American Centrifuge Lead Cascade Facility, the American Centrifuge Plant, and its U.S. Nuclear Regulatory Commission (NRC) regulated suppliers conducting classified work in support of the American Centrifuge program.

Background

Facilities that generate classified information must have a program for review and classification of such information. 10 CFR 95.57(c) requires that records for all classification actions be documented and submitted to the NRC. One method of submission is utilization of NRC Form 790.

Document herewith contains
~~Security-Related Information - Withhold Under 10 CFR 2.390~~
~~Official Use Only~~
~~Export Controlled Information~~
When separated from Enclosure 3, this letter is uncontrolled.

USEC Inc.
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Telephone 301-564-3200 Fax 301-564-3201 <http://www.usec.com>

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USEC Inc. (USEC) has been completing NRC Form 790 for its classification actions since approval of its Security Program for the protection of classified matter and being granted a Facility Clearance. As the American Centrifuge program continues to mature and the level of activity increases, the number of classification actions continues to grow, increasing the number of NRC Form 790s prepared each month. USEC must also report its classification actions to the U.S. Department of Energy (DOE).

Discussion

It is possible that USEC's classification actions may be double counted by the two U.S. Government agencies having jurisdiction over classification and protection of American Centrifuge technology. Moreover, double reporting creates a burden on the Centrifuge Classification Officer and Derivative Classifiers to maintain dual records, since the reporting protocols are different among the agencies. Lastly, this burden has evolved and grown beyond what was anticipated when the regulation was originally promulgated, as it specifically applies to USEC utilizing American Centrifuge technology.

Accordingly, USEC hereby requests an exemption from the requirements contained in 10 CFR 95.57(c) from filing classification records with the NRC. Alternatively, USEC proposes that it continue to report to the DOE a summary of its classification decisions and make these records available for NRC inspection at the facility. To incorporate this exemption, a new section would be added to the License Applications in Section 1.2.5, Special Exemptions or Special Authorizations, reflecting the exemption. A conforming change would also be made to the Security Program, Section 2.17.

Enclosure 1 of this letter provides a detailed description, justification for the proposed change, and determination that the proposed change to the Security Program associated with this request is not significant. Enclosure 2 provides proposed changed pages for the License Applications. Enclosure 3 provides proposed changed pages for the Security Program.

Enclosure 3 contains Security-Related Information and in accordance with the guidance provided by the DOE, this enclosure also contains Official Use Only information. Therefore, USEC requests Enclosure 3 be withheld from public disclosure pursuant to 10 CFR 2.390(d)(1). Additionally, Enclosure 3 has been determined, in accordance with the guidance provided by the DOE, to contain Export Controlled Information. This information must be protected from disclosure per the requirements of 10 CFR Part 810.

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Action

USEC respectfully requests NRC review and concurrence of the proposed license exemption at your earliest convenience.

Contact

If you have any questions regarding this matter, please contact me at (301) 564-3470 or Vernon J. Shanks at (740) 897-2343.

Sincerely,



Peter J. Miner
Director, Nuclear Safety and Safeguards

Enclosures: As Stated

cc (without enclosures, unless otherwise noted):

R. DeVault, DOE
J. Downs, NRC HQ
K. Everly, NRC HQ (w/enclosures)
L. Pitts, NRC Region II
B. Smith, NRC HQ
O. Siurano, NRC HQ (w/enclosures)
B. Stapleton, NRC HQ

Enclosure 1 of AET 12-0061

Detailed Description, Justification for Change, and Significance Determination

**Information contained within
does not contain
Export Controlled Information**

**Reviewer: Gregg Peed
Date: 10/09/2012**

USEC Inc. (USEC) hereby requests an exemption from the requirements contained in 10 *Code of Federal Regulations* (CFR) 95.57(c) from filing classification records with the U. S. Nuclear Regulatory Commission (NRC). The exemption is authorized by law and will not negatively impact the protection of classified matter at USEC's American Centrifuge facilities.

Classification Activity Reporting Requirements

Annual Reporting of Implementation of Executive Order 13526

Section 5.2 of Executive Order 13526, *Classified National Security Information*, directs the Information Security Oversight Office (ISOO) to "report at least annually to the President on the implementation of this Order." ISOO accomplishes this task in part by collecting data from Executive branch agencies via Standard Form (SF) 311, Agency Security Classification Management Program Data.

ISOO has issued a booklet titled, SF 311, Agency Security Classification Management Program Data, describing use of form SF 311 for reporting classification activities. The Introduction to this booklet states:

The ISOO implementing directive, 32 CFR [*Code of Federal Regulations*] Part 2001.80(1), directs the use of the SF 311 as a data collection form to be submitted by the agencies for inclusion in the report to the President.

U.S. Nuclear Regulatory Commission (NRC) Form 790

10 CFR 95.57(c) states:

...NRC requires records for all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Security Operations. These may be submitted either on an "as completed" basis or monthly. The information may be submitted either electronically by an on-line system (NRC prefers the use of a dial-in automated system connected to the Division of Security Operations) or by paper copy using NRC Form 790.

This form is used by Derivative Classifiers (DCs) engaged in activities in support of the American Centrifuge program to document each classified determination (Restricted Data or National Security Information) made at NRC regulated facilities. The facilities currently regulated by the NRC include:

- American Centrifuge Lead Cascade Facility (Lead Cascade) and American Centrifuge Plant (ACP) in Piketon, OH;
- Alliant Techsystems, Inc. at Allegheny Ballistics Laboratory in Rocket Center, WV; and
- Curtiss-Wright Electro-Mechanical Corporation in Cheswick, PA.

The DCs send their completed forms to the Centrifuge Classification Officer each month, who compiles them for submission to the NRC.

U.S. Department of Energy (DOE) Reporting Methodology

American Centrifuge program classification activity is also reported to the DOE, both quarterly and annually. This requirement is program-wide, not facility specific. The quarterly reports (current format shown below) are a summation of the total numbers of classification reviews performed, categorized by the results of those reviews (Secret, Confidential, or Unclassified). The annual report is a compilation of the quarterly reports and also includes data on Classification/Security appraisals conducted that year.

DOE Classification Activity Quarterly Report

3rd Quarter FY 2012

Office of Declassification and Field

Classification Review Report: Newly Generated Documents

Name: Gregg Peed, USEC ACP

	(Report # of Documents)	
	RD/FRD	NSI
Top Secret	0	0
Secret	610	0
Confidential	873	0
Confirmed Unclassified	4,253	

Current Level of Derivative Classification Activity

A snapshot from January through August 2012, reveals that DCs at USEC's NRC regulated facilities completed and submitted a total of 876 NRC Form 790s. This represents an average of nearly 110 forms per month.

Additional Derivative Classification Activity

USEC has formed a joint company with the Babcock and Wilcox Technical Services Group Inc. (B&W) to form American Centrifuge Manufacturing, LLC (ACM) with responsibility for manufacturing most of the classified parts for the American Centrifuge program centrifuges. This activity takes place at the Oak Ridge, TN Technology Manufacturing Center (TMC). The TMC is not currently under NRC regulatory oversight; however, the reporting requirements to NRC will become effective upon approval of the revised Security Program for that facility. The Security Program was submitted for NRC review and approval on August 22, 2011.

A review of recent DOE classification activity reports shows that during the January through June 2012 timeframe, DCs located at the TMC made a total of 2,234 classified determinations, an average of over 372 per month. Addition of this level of activity to the current number of required forms will raise the total generation rate to over 480 Form 790s per month.

Both the current NRC regulated facility and the TMC numbers reflect activity during a time of limited production for the Cascade Demonstration Test Program (i.e., a manufacturing rate of 8 to 12 centrifuges per month). The scheduled production rate for build-out of the commercial plant is 400 centrifuges per month. Based on the above data it is anticipated that in excess of 20,000 classified documents per month may be generated at NRC regulated facilities during full ACP production.

Additional Information Supporting Exemption Request

NRC is responsible as the Cognizant Security Agency for NRC regulated facilities for inspection and oversight of classified matter protection pursuant to 10 CFR Part 95. The DOE is responsible for classification oversight of American Centrifuge technology and have issued classification guide CG-ACP-2 for use by the Centrifuge Classification Officer and DCs. Accordingly, both agencies have jurisdiction over some aspects of classification of American Centrifuge technology. Since much of the classification activity for the American Centrifuge program is reported to both the NRC and DOE, albeit in different formats, it is possible that the USEC American Centrifuge classification actions completed for NRC regulated facilities are being double counted under the requirements of Executive Order 13526.

Information on the current NRC Form 790 includes an "estimated burden per response" time of six minutes for completion of each form. Based on DC experience thus far, this estimate is reasonable. At this rate, completion of the average 110 forms per month occupies 11 person-hours of time. Once the ACM classification actions are added, completion of the forms will take about 48 person-hours per month. Assuming that USEC proceeds with deployment of the ACP, with a projected 20,000 forms per month, this effort would balloon to approximately 2,000 person-hours per month.

It is also worth noting that the specific language of 10 CFR 95.57(c) indicates paper copies will be filed on Form 790, but the specific format is not specified in Executive Order 13526, which this regulatory requirement implements.

Exemption Request

USEC hereby seeks an exemption from filing a record of classification actions for the American Centrifuge program at its NRC regulated facilities listed above. USEC also requests that this exemption, if granted, be applicable to ACM when it becomes regulated by the NRC. As an alternative to continuing to file NRC Form 790, USEC proposes that it continue to submit quarterly the classification summary document that it is required to file with the DOE for all derivative classification decisions made during the previous quarter and make these documents available for NRC inspection at the facility. This would meet the underlying intent of the regulation to ensure

records of classification actions are provided to the U.S. Government for reporting in accordance with Executive Order 13526 annually, without the possibility of duplication of reporting.

The granting of specific exemptions to NRC regulations is addressed in 10 CFR 95.11. The regulation states, in part:

The NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, that are - (a) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; or ...

The particular exemption requested is authorized by law, since no law specifically requires a licensee to file a specific document to record a classification decision. Moreover, granting the exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security since the preparation of Form 790 is an administrative requirement that simply creates a record of a positive classification decision and the requirements for reviewing, marking, handling and storage of classified matter will not be changed. No aspects of protection of classified matter will be altered or changed by this request.

The regulation further states, in part:

(b) Coincidental with one or more of the following:

(2) An application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

With USEC's proposal to continue its reporting of a summary of its DC classification activity to the DOE quarterly and annually, the underlying purpose of the rule, namely reporting to the U.S. Government of its classification activity, would be met.

Lastly, our request satisfies another of the regulation's criterion for justification of an exemption which states:

(3) When compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

Because of the nature of the American Centrifuge technology, and the involvement of two U.S. Government agencies in classification activities, double reporting creates a burden on the Centrifuge Classification Officer and DCs to maintain dual records, since the reporting protocols are different among the agencies. Moreover, this burden has evolved and grown beyond what was anticipated when the regulation was originally promulgated, as it specifically applies to USEC utilizing American Centrifuge technology. When ACM becomes an NRC regulated facility we expect that completion of the forms will take over 48 person-hours per month to complete, compile, and submit to the NRC. Making the summary report filed with DOE available to NRC for inspection at the facility will satisfy NRC's oversight obligations, while eliminating the need for double reporting and the possibility of double counting of the classification actions.

Detailed Description of Change

The proposed change adds a new section to the License Applications in Section 1.2.5, Special Exemptions or Special Authorizations, reflecting the exemption. A conforming change would also be made to the Security Program, Section 2.17(c).

Enclosure 2 provides the Proposed Changes to Section 1.2.5 of the License Applications for the Lead Cascade and ACP. Enclosure 3 provides the Proposed Changes to Section 2.17 of the Security Program. The proposed changes are identified by the following method:

- ~~Blue Strikeout~~ - Identifies text to be removed
- Red underline – Identifies text to be added

Justification for Change

The proposed exemption/change will not impact the method of protection of classified matter nor will the exemption/change decrease the effectiveness of any program or plan contained in the License Applications and Supporting Documents. The exemption request and conforming change to the Security Program simply eliminates the current method of reporting classification actions to the NRC (i.e., dual reporting), reducing unnecessary burden and redundancy, while maintaining the underlying intent of reporting to the U.S Government its classification actions for compliance with Executive Order 13526. Moreover, the proposed exemption/change will not change the assumptions, or change, degrade or prevent actions described or assumed in accident sequences evaluated and described in the Lead Cascade or the ACP Integrated Safety Analysis (ISA) Summary, nor will any items relied on for safety (IROFS) be affected. Therefore, the proposed exemption/change does not adversely affect safety or continued safe operation of the Lead Cascade or the ACP, or result in an increase in the radiological or chemical consequences of accidents scenarios described in the Lead Cascade ISA Summary or the ACP ISA Summary.

Significance Determination

USEC has reviewed the proposed change associated with this request and provides the following Significance Determination for consideration.

1. No significant change to any condition to the Licenses.

USEC is requesting an exemption from the administrative reporting requirements of 10 CFR 95.57(c) and provides conforming changes to the License Applications and Security Program to reflect the exemption, if approved. There is no change proposed to the Materials Licenses. Accordingly, there would be no significant change to any condition of the Materials Licenses.

2. No significant increase in the probability of occurrence or consequences of previously evaluated accident.

The proposed change requests an exemption from the administrative reporting requirements of 10 CFR 95.57(c) and provides conforming changes to the License Applications and Security Program to reflect the exemption, if approved. These changes will not affect any accident scenario identified in the ISA Summary for the Lead Cascade or the ACP, and the facilities will continue to meet the performance requirements of 10 CFR 70.61. Therefore, there is no significant increase in the probability of occurrence or consequences of the previously evaluated accidents.

3. No new or different type of accident.

The proposed changes request an exemption from the administrative reporting requirements of 10 CFR 95.57(c) and provides conforming changes to the License Applications and Security Program to reflect the exemption, if approved. These proposed changes are administrative in nature and as such, do not create new or different types of accident sequences that have not previously been evaluated and described in the ISA Summary.

4. No significant reduction in margins of safety.

The proposed changes request an exemption from the administrative reporting requirements of 10 CFR 95.57(c) and provides conforming changes to the License Applications and Security Program to reflect the exemption, if approved. As such, the proposed changes are administrative in nature and do not affect any IROFS. Moreover, they will not change the failure modes associated with events that were previously evaluated in the ISA Summary and they will not change the consequences or likelihood of occurrence of any event evaluated in the ISA Summary. Therefore, the proposed changes do not decrease the margin of safety associated with any IROFS that are being credited to ensure the performance requirements of 10 CFR 70.61 are met.

5. No significant decrease in the effectiveness of any programs or plans contained in the licensing documents.

- The proposed changes will not decrease the overall level of security system performance to protect against the loss or compromise of classified matter since the proposed changes simply request relief from an administrative reporting requirement. In addition, the proposed changes do not affect the control of classified storage areas or vaults, training of classifiers, or computer security and the proposed changes do not alter aspects of physical security or transportation of special nuclear material.
- The proposed changes will have no effect on the Fundamental Nuclear Material Control Plan (FNMCP) meeting the requirements of 10 CFR Parts 70 and 74. The function or process to control nuclear material will be carried out to the same level when these changes are implemented.
- The Emergency Plans for the Lead Cascade and the ACP will still meet the requirements of 10 CFR Part 70 and the guidance of NRC Regulatory Guide 3.67 and Regulatory Issue Summary 2005-02 if the exemption and conforming changes are approved. The proposed changes will not create a reduction in the levels of emergency preparedness discussed in the Emergency Plan, and will not decrease the abilities of the Emergency Response Organization to mitigate accident consequences or reasonably assure the adequate protection of the health and safety of the off-site and on-site personnel in the event of an emergency since they only reflect relief from an administrative reporting requirement.
- The proposed changes are administrative in nature relating to documentation of classification decisions and as such, do not represent an alternative to a requirement described in the Quality Assurance Program Description (QAPD) and does not represent a relaxation of a requirement of QAPD.

Based on the above, the proposed changes will not result in a decrease in the effectiveness of the Security Program/Plans, FNMCP, Emergency Plan, or the QAPD contained in the licensing documents.

6. The proposed amendment does not result in undue risk to: 1) public health and safety; 2) common defense and security; and 3) environment.

The proposed changes are administrative in nature and would allow an alternative reporting methodology for classification decisions. The changes do not affect the ISA Summary. As such, there is no increase in the likelihood of occurrence or consequences of a previously evaluated accident or malfunction of IROFS. There are no new accident initiators or increases in hazardous materials or waste streams that exceed applicable regulatory requirements. Moreover, the proposed changes will not increase the likelihood classified matter or special nuclear material will be accessible to unauthorized personnel since the protection requirements will not change. Therefore, the proposed amendment does not result in undue risk to public health and safety, the environment, or to the common defense and security.

7. There is no change in the type or significant increases in the amounts of any effluents that may

be released off-site.

The proposed changes do not create any new or unusual sources of hazardous substances, hazardous waste, or new waste streams that could be generated or used in unacceptable levels that exceed applicable regulatory requirements. Therefore, there is no change in the type or significant increases in the amounts of any effluents that may be released off-site.

8. There is no significant increase in individual or cumulative occupational radiation exposure.

The proposed changes request an exemption from the administrative reporting requirements of 10 CFR 95.57(c) and provides conforming changes to the License Applications and Security Program to reflect the exemption, if approved. There is no change proposed to the way the facility is operated or how radioactive materials are handled. As such, the proposed changes will not increase radiological or chemical releases beyond applicable regulatory limits and will not create any new or unusual sources of radioactive waste. Therefore, the proposed amendment will have no significant increase in individual or cumulative occupational radiation exposure.

9. There is no significant construction impact.

Granting an exemption to the reporting requirements of 10 CFR 95.57(c) does not affect the facility, and therefore will not have any construction impact on the Lead Cascade or the ACP.

Enclosure 2 of AET 12-0061

**Proposed Change for the License Applications for the American Centrifuge Lead Cascade
Facility and American Centrifuge Plant**

**Information contained within
does not contain
Export Controlled Information**

**Reviewer: Gregg Peed
Date: 10/09/2012**

The following exemption to the applicable 10 CFR 70.50 reporting requirement is identified in Section 11.6.6 of this license application:

- The 10 CFR 70.50(c)(2) reporting criteria requires that the Licensee submit a written report within 30 days of the initial report required by 10 CFR 70.50 (a) or (b) or by 10 CFR 70.74 and Appendix A of Part 70. In lieu of the 30-day requirement described in 10 CFR 70.50(c)(2), the Licensee requests NRC approval to submit the required written reports within 60 days of the initial notifications.

The following Special Authorization has been identified in this license application:

- Surface Contamination Release Levels for Unrestricted Use – Items may be released for unrestricted use if the surface contamination is less than the levels listed in Table 4.6-1.

The following exemption from the requirements in 10 CFR 95.57(c) is identified in Section 2.17.c) of the Security Program:

- NRC regulations in 10 CFR 95.57(c) require that all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Security Operations. These may be submitted either on an “as completed” basis or monthly. The information may be submitted either electronically by an on-line system or by paper copy using NRC Form 790. Historically, USEC has utilized NRC Form 790 for each classification action, has compiled them monthly, and submitted them to the NRC. USEC must also submit a quarterly classification summary document to the DOE for all derivative classification decisions made during the previous quarter. This dual reporting is burdensome to the Derivative Classifiers and the Centrifuge Classification Officer and creates a situation where the classification actions may be double counted. Accordingly, in lieu of filing its classification actions with NRC, USEC will continue to submit the quarterly classification summary documents to DOE and will make them available for NRC inspection at the facility.

1.2.6 Security of Classified Information

The Licensee is required by 10 CFR 70.22(m) to submit, as part of its application for a license for the Lead Cascade, a plan describing the facility’s proposed security procedures and controls, as set forth in 10 CFR Part 95, for the protection of classified matter. The Licensee satisfied this requirement by submission of its plan for the protection of classified matter as Chapter 2 of the Security Program.

The indemnity agreement contained in the Lease will “cover liability claims arising out of any occurrence within the United States that causes, within or outside the United States, bodily injury, sickness, disease, death, loss of or damage to property, or loss of use of property arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source material or special nuclear material.” Section 193(d) affords the Commission the discretion to determine the type and amount of liability insurance that is required to cover liability claims. The Commission has the discretion to conclude that no liability insurance is required in light of the DOE indemnity agreement. Therefore, the requested exemption is authorized by law.

Moreover, the requested exemption is in the public interest since it will facilitate deployment of the ACP, thereby maintaining domestic enrichment capacity using more efficient centrifuge technology. Requiring separate nuclear liability insurance would at best impose an unnecessary financial burden on the licensee and at worst preclude the construction of the ACP if commercial insurance ultimately is unavailable for facilities, such as the ACP, which are located on a DOE owned site. ANI, the only company providing commercial nuclear liability insurance in the U.S., has informed us that it has never insured a facility located on a DOE owned site. Furthermore, the separate liability insurance would not provide a commensurate benefit to the public since the DOE indemnity covers any public liability under Section 170 of the AEA up to the statutory limit of liability. The DOE indemnity agreement in the Lease adequately provides financial protection for the public for public liability as defined in the AEA. Therefore, the requested exemption is in the public interest.

The following Special Authorization has been identified in this license application:

- Surface Contamination Release Levels for Unrestricted Use – Items may be released for unrestricted use if the surface contamination is less than the levels listed in Table 4.6-1.

The following exemption from the requirements in 10 CFR 95.57(c) is identified in Section 2.17.c) of the Security Program:

- NRC regulations in 10 CFR 95.57(c) require that all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Security Operations. These may be submitted either on an “as completed” basis or monthly. The information may be submitted either electronically by an on-line system or by paper copy using NRC Form 790. Historically, USEC has utilized NRC Form 790 for each classification action, has compiled them monthly, and submitted them to the NRC. USEC must also submit a quarterly classification summary document to the DOE for all derivative classification decisions made during the previous quarter. This dual reporting is burdensome to the Derivative Classifiers and the Centrifuge Classification Officer and creates a situation where the classification actions may be double counted. Accordingly, in lieu of filing its classification actions with NRC, USEC will continue to submit the quarterly classification summary documents to DOE and will make them available for NRC inspection at the facility.

Enclosure 3 of AET 12-0061

Proposed Change for the Security Program for the American Centrifuge Plant

~~Security-Related Information - Withhold Under 10 CFR 2.390~~

~~OFFICIAL USE ONLY~~

May be exempt from public release under the Freedom of
Information Act (5 U.S.C. 552), exemption number and category:
#7, Law Enforcement

Department of Energy review required before public release.

Name/Org: Gregg Peed, B&W Date: 10/09/12
Guidance (if applicable): CG-SS-4