

## SAFETY EVALUATION REPORT

DOCKETS: 70-7003, 70-7004

LICENSEE: USEC Inc. (Now doing business as American Centrifuge Operating, LLC [ACO])  
Bethesda, Maryland

SUBJECT: SAFETY EVALUATION REPORT: EXEMPTION REQUEST FROM TITLE 10  
OF THE *CODE OF FEDERAL REGULATIONS* PART 95.57(c)

### BACKGROUND

By letter dated December 20, 2012 ( Agencywide Documents Access and Management System [ADAMS] Accession Number ML13016A065), USEC Inc. (USEC) requested that the U.S. Nuclear Regulatory Commission (NRC) grant an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 95.57(c). The exemption would pertain to certain classified work conducted at USEC's American Centrifuge Plant (ACP), which is licensed under 10 CFR Part 70 requirements (SNM-2011). Additionally, within the scope of SNM-2011 is certain classified work performed at USEC's suppliers (i.e., Alliant Techsystems, Inc. at Allegheny Ballistics Laboratory in Rocket Center, West Virginia and Curtiss-Wright Electro-Mechanical Corporation in Cheswick, Pennsylvania), work done under those operations is also covered by this exemption. Furthermore, USEC is testing the American Centrifuge Lead Cascade Facility (Lead Cascade) for the potential commercial uranium enrichment operations (SNM-7004), and certain classified work done under this license is also covered by this exemption. Both the NRC and the Department of Energy (DOE) have jurisdiction over classification and protection of information regarding USEC's development of its centrifuge technology.

The 10 CFR 95.57(c) regulation requires records for all classification actions (documents classified, declassified, or downgraded) to be submitted to the NRC Division of Security Operations (DSO). These may be submitted either on an "as completed" basis or monthly. The information may be submitted either electronically to the DSO or by paper copy using NRC Form 790.

Under Executive Order (EO) 13526 ("Classified National Security Information"), both the NRC and the DOE provide data to the Executive Branch's Information Security Oversight Office (ISOO) regarding classification actions taken by regulated entities (e.g., the ACP). Pursuant to EO 13526, for classification actions taken at the NRC regulated USEC facilities, the DSO collects the data provided by USEC as described above, and submits it annually to the ISOO.

### DISCUSSION

Requests for specific exemptions from 10 CFR Part 95 requirements are evaluated pursuant to 10 CFR 95.11. Under 10 CFR 95.11(a), the NRC may grant an exemption from 10 CFR Part 95 requirements if it finds that granting the exemption is "authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security." Further, under 10 CFR 95.11(b)(2), the NRC may grant an exemption from the Part 95 requirements when "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."

In its December 20, 2012, exemption request, USEC requests an exemption from 10 CFR 95.57(c), which, as stated above, requires licensees to submit records for all classification actions (documents classified, declassified, or downgraded), to the NRC's DSO. 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. USEC currently meets this requirement by submitting this information to the NRC by completing NRC Form 790, scanning the form into a Portable Document Format (PDF) file, and then submitting the information to the NRC via e-mail. The collected data is subsequently provided by the NRC annually to ISOO.

In its December 20, 2012, exemption request, USEC stated that it provides the DOE similar information – but in a different format – regarding its classification actions, and does so both quarterly and annually. If its exemption request is granted, USEC proposes that it would continue to report to the DOE a summary of its classification decisions regarding the ACP, and these records would be made available for NRC inspection at the ACP. USEC states that by continuing to report information to the DOE, the underlying purpose of the rule, e.g., reporting classification activities to the U.S. Government, would be met. USEC further stated that, unlike the data reports on NRC Form 790, its reports to DOE are not provided as a “facility specific” report (i.e., USEC's classification actions are not separately identified as being applicable to the Lead Cascade at the ACP). Rather, the reports to DOE are a summation of all the classification actions performed for the entire American Centrifuge program.

The NRC staff evaluated the information USEC provides to DOE to determine if it could still appropriately track USEC's classification actions (as it currently does using NRC Form 790) through the examination of this information. The NRC staff finds that it could appropriately track USEC's classification actions under USEC's proposed alternative because the information USEC reports to the DOE is essentially the same information provided to the NRC on NRC Form 790. The NRC staff also finds that, despite the format differences in reports to NRC and DOE, the NRC inspectors reviewing the DOE data would still be able to identify the facility generating the information by looking at the name of the USEC classifier that performed the action and signed the report. Therefore, the NRC staff concludes that, by inspecting the forms generated by USEC to report its classification actions to DOE, the NRC will still be able to sufficiently track USEC's classification actions to the same degree as now occurs by using NRC Form 790. Accordingly, the NRC staff also concludes that, by providing its reports of classification actions to DOE and making them available for NRC staff inspection, USEC is still meeting the underlying purpose of the rule.

Finally, in its exemption request, USEC stated that the proposed exemption will not impact the method of protection of classified matter nor will the exemption decrease the effectiveness of any program or plan contained in the License Applications and Supporting Documents. According to USEC, the proposed exemption 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. The staff reviewed this information and determines that the proposed exemption would not adversely affect safety or continued safe operation of the Lead Cascade or the ACP because the requirement to report information using a Form 790 is administrative in nature and exempting USEC from this requirement would not change its operations. As discussed above, USEC will continue to report information regarding classification activities to the DOE and NRC will continue to have access to this information through its inspections. Further, because this exemption would not impact the protection of

classified matter, the NRC also concludes that granting this exemption would not impact security at the facility.

### CONCLUSION

Based on the NRC staff's review of the information provided, the NRC staff concludes that, granting USEC an exemption from the 10 CFR 95.57(c) reporting requirement would not represent an undue risk to the public health and safety since it does not impact operations and preparation of Form 790 is administrative in nature. In addition, the NRC staff concludes that granting the exemption is consistent with the common defense and security since it does not change the requirements for reviewing, marking, handling, and storage of classified matter. The NRC staff also concludes that, by providing its reports of classification actions to DOE and making them available for NRC staff inspection, USEC is still meeting the underlying purpose of the rule, and NRC will continue to have access to this information through its inspections.

This action meets the categorical exclusion provision in 10 CFR 51.22(c)(25) as this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve reporting requirements. Therefore, the action does not require either an environmental assessment or an environmental impact statement.

As such, the NRC staff concludes that USEC's request to be exempted from the regulations in 10 CFR Part 95.57(c) should be approved pursuant to 10 CFR 95.11(a) and 95.11(b)(2).

### PRINCIPAL CONTRIBUTORS

J. Keith Everly, NSIR  
Osiris Siurano, NMSS