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**POLICY ISSUE**  
(Notation Vote)

October 25, 1993

SECY-93-293

**FOR:** The Commissioners

**FROM:** William C. Parler  
General Counsel

**SUBJECT:** JOINT STATEMENT OF UNDERSTANDING BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF ENERGY ON THE REGULATION OF GASEOUS DIFFUSION ENRICHMENT PLANTS

**PURPOSE:**

To request the Commission's approval of a Joint Statement of Understanding between the NRC and DOE on the regulation of the gaseous diffusion enrichment plants.

**DISCUSSION:**

Over the last several months, NRC and DOE staff representatives have developed a statement of understanding the two agencies would issue jointly to generally describe the process that will lead to NRC's assumption of regulatory responsibility with respect to the two gaseous diffusion plants (GDPs) owned by DOE and now operated by the United States Enrichment Corporation (USEC). At the staff level, both agencies have approved the attached final draft Joint Statement and are separately presenting it to the Commission and Secretary, respectively, for approval. It is therefore now appropriate to request that the Commission authorize the Chairman to sign the attached Joint Statement on behalf of the Commission.

In brief, and consistent with the Energy Policy Act provisions on regulation of the GDPs by NRC, the attached Joint Statement identifies the respective regulatory responsibilities of NRC and DOE, and recognizes the need for cooperation between the two agencies to provide for a successful implementation of the regulatory transition. The Joint Statement describes NRC's responsibilities to establish standards for the GDPs to protect

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**NOTE:** TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

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the public health and safety and the common defense and security, and to establish a certification process to ensure that USEC complies with the NRC standards. The Joint Statement also includes DOE's commitment to continue to exercise regulatory oversight over GDP operations until such time as NRC issues standards and completes the first certification process. The Joint Statement further includes DOE's pledge to support NRC's development of regulatory standards by making information available and by permitting NRC to maintain observers at the GDPs before assuming its regulatory role.

One significant difference between the attached final draft and earlier drafts provided to the Commission, is that paragraphs four and five are modified to reflect a staff-level agreement on the agencies' respective responsibilities for access authorization and security facility approval programs, including the granting of security clearances. Specifically, these paragraphs of the Joint Statement reflect that DOE would handle all access authorization programs, and NRC would be responsible for security facility approvals and the information security programs.

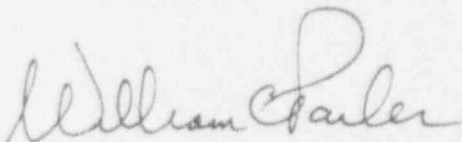
Upon approval by both agencies, the Joint Statement will be published in the Federal Register.

RECOMMENDATION:

That the Commission approve the attached Joint Statement of Understanding for the Chairman's signature on the Commission's behalf.

COORDINATION:

The Executive Director for Operations concurs in the recommendation.



William C. Parler  
General Counsel

Enclosure:  
Final Draft Joint Statement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Monday, November 8, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, November 1, 1993, 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.

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JOINT STATEMENT OF UNDERSTANDING BETWEEN THE  
NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF ENERGY  
ON IMPLEMENTING THE ENERGY POLICY ACT  
PROVISIONS ON THE REGULATION OF GASEOUS DIFFUSION URANIUM  
ENRICHMENT PLANTS

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By October 24, 1994, pursuant to Title XI of the Energy Policy Act of 1992 (the "Act"), the Nuclear Regulatory Commission (the "NRC") is directed to establish standards (the "standards") for regulation of the gaseous diffusion uranium enrichment facilities (the "facilities" or "GDPS") owned by the Department of Energy (the "DOE") in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Title XI of the Act also specifies that NRC establish a certification process to ensure that the U.S. Enrichment Corporation (the "Corporation"), which is to lease the facilities from DOE, complies with the NRC standards. After NRC establishes the standards, the Corporation is required to apply at least annually to NRC for a certificate of compliance with the standards. The requirement for a certificate of compliance is in lieu of any requirement for a license for the facilities leased by the Corporation. The Act also provides that the Corporation may not operate the facilities unless the NRC makes a determination that the facilities are in compliance with the NRC standards to be established by October 24, 1994, or NRC approves a plan prepared by DOE for achieving compliance with such standards.

Title XI of the Act also provides that the NRC, in consultation with the Environmental Protection Agency (the "EPA"), shall review the operations of the Corporation to ensure that public health and safety are adequately protected. Further, Title IX of the Act provides the Corporation shall lease the gaseous diffusion facilities of DOE at Paducah, Kentucky and Portsmouth, Ohio for a six-year period, beginning July 1, 1993.

Pursuant to the Atomic Energy Act of 1954, as amended, including in particular the provisions of the Energy Policy Act of 1992 on regulation and certification as generally described above, NRC and DOE are issuing this joint statement of understanding (the "Joint Statement") to address matters relating to the process by which NRC will assume, and DOE will relinquish at the time and to the extent provided by law, responsibility for regulatory oversight under the Act for the DOE facilities leased by the Corporation as specified by the Energy Policy Act of 1992. In view of the explicit framework of the Act under which NRC is to assume responsibility for the radiological protection of the public health and safety and the common defense and security after NRC standards are established and become effective for that purpose, this Joint Statement of Understanding identifies certain responsibilities of NRC and DOE with respect to the process, provides for cooperation between NRC and DOE necessary to the successful implementation of the process, and services such other purposes as may be related thereto.

In NRC requesting and DOE agreeing to supply information, DOE and NRC understand that the purpose is to help establish NRC's regulatory framework under the Act, not for NRC to establish oversight before NRC assumes regulatory jurisdiction over the facilities.

1. Under the Act, by October 24, 1994, NRC is directed to establish its standards to protect public health and safety and common defense and security for the facilities leased to the Corporation.

2. In order to support NRC in developing the standards identified in paragraph 1, DOE will supply available information, permit site visits, and provide other similar assistance in support of NRC standards development in response to NRC's request. In particular, DOE will provide any available description of the Safety Basis and Framework for DOE Oversight of the Gaseous Diffusion Plants, including:

(i) A description of the safety analyses, operational safety requirements, and the bases for maintaining the safety basis for the GDPs. The description will include the information which DOE relies on to demonstrate that the current regulatory base is adequate to protect the public health and safety and provide for the common defense and security.

(ii) A description of the operational requirements, consisting of the basic operational safety objectives, implementation requirements, implementation measures, status of conformance with the implementation requirements, and the corrective actions being taken to address non-conformances.

(iii) A description of DOE's program for continuing regulatory oversight over the GDPs, including a description of the program for compliance reviews and audits, followup actions to assure that audit findings are addressed, and the status of open audit findings.

At NRC's request, DOE will supply copies of applicable DOE Orders, other documents referenced in the aforementioned descriptions, and such other documents as are necessary to support NRC's standards development.

DOE will also permit NRC to locate observers at the facilities on or after July 1, 1993, to obtain information and knowledge that may be useful to NRC in developing or implementing its standards. Interim guidance for the NRC observers will be established by the DOE Regulatory Oversight Manager and the NRC covering the period before NRC assumes regulatory jurisdiction over the facilities.

3. As indicated above, the Energy Policy Act amendments to the Atomic Energy Act of 1954 condition NRC regulation (through the annual certification process) of the facilities leased to the Corporation on the promulgation of the new NRC standards. NRC anticipates that it will require the Corporation to file the first

annual application for a certificate of compliance within six (6) months after promulgation by NRC of the standards. Thus, until such time as NRC has promulgated its standards and they have become effective and the first certification process based on NRC standards has been completed, DOE will continue to exercise its public health and safety and common defense and security regulatory oversight over the operation of the facilities.

4. During the entire period that the facilities are in operation, and thereafter as long as necessary, on a full cost reimbursable basis from the Corporation, DOE will retain responsibility for all access authorization programs with respect to the facilities leased by the Corporation and the Corporation itself. DOE will be responsible for the administrative determinations relating to granting, suspending, adjudicating, or denying a security clearance, and for reinvestigating an individual's background for continued access.

5. At all times during the period the facilities are in operation by the Corporation after NRC assumes responsibility for regulatory oversight, NRC will be responsible for granting security facility approvals and for establishing an information security program to ensure that Restricted Data, including both information and equipment, is appropriately classified and protected with respect to the facilities leased by the Corporation and the Corporation itself.

This Joint Statement is not a regulation and is not intended to create or alter legal requirements or obligations of NRC, DOE, the Corporation or any other interested person.

For the Nuclear Regulatory Commission,

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Ivan Selin  
Chairman, Nuclear Regulatory Commission  
Dated: October \_\_, 1993.

For the Department of Energy,

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Hazel R. O'Leary  
Secretary of Energy  
Dated: October \_\_, 1993.