

19, 20, 21 et al.
(59 FR 6792)

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 26, 51, 70, 71, 73, 74, 76 and 95

RIN 3150-AE62

Certification of Gaseous Diffusion Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add a new part that would include the requirements for certification and operation of the U.S. Department of Energy (DOE) owned gaseous diffusion plants that enrich uranium. These proposed regulations would protect the public health and safety from radiological hazards and would provide for the common defense and security, including adequate safeguards, in all uranium enrichment activities of the United States Enrichment Corporation (USEC) in its operation of the two gaseous diffusion plants that USEC is leasing from the DOE. These two plants are located in Paducah, Kentucky, and Portsmouth, Ohio. In addition to the proposed new part, a number of conforming amendments are also being proposed to NRC's Regulations.

4/12/94

DATES: Submit comments by (insert date 60 days after the date of publication in the Federal Register). Comments received after this date will be

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considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, 20852, between 7:45 am and 4:15 pm Federal workdays.

Copies of comments received, the environmental assessment, finding of no significant impact, and the regulatory analysis may be examined 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, telephone (301) 492-3834; Mr. S. R. Ruffin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2696; Mr. C. B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2366; or Mr. D. G. Kidd, Office of Administration, Division of Security, U. S. Nuclear Regulatory Commission, Washington, DC 2055, telephone (301) 492-4127.

SUPPLEMENTARY INFORMATION:

Background

The President signed H.R. 776, the "Energy Policy Act of 1992" (the Act), into law on October 24, 1992. The Act amended the Atomic Energy Act of 1954 ("AEA"), to establish a new government corporation, the U.S. Enrichment Corporation (the "Corporation"), for the purpose of managing and operating the uranium enrichment enterprise previously owned and operated by the Department of Energy. Section 1701 of the AEA, as amended, provides that within 2 years after enactment of the legislation, the NRC is required to promulgate standards that will apply to the two operating gaseous diffusion plants to protect the public health and safety from radiological hazards, and to provide for the common defense and security. The NRC is proposing to establish requirements and procedures for the certification process by addition of a new part to Chapter I of Title 10 of the Code of Federal Regulations.

Section 1701(b)(2) of the AEA, as amended, directs the NRC to establish a certification process under which the two gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky, to be operated by the Corporation, will be annually certified by the NRC for compliance with those standards.

The Commission recognizes that the gaseous diffusion plants were designed and constructed before the new certification requirement was established in the Energy Policy Act of 1992, and that they have operated safely for approximately 40 years. This proposed rule is based upon comparable NRC requirements that have been in place for a number of years, and that the staff believes are adequate and appropriate for the gaseous diffusion

plants, and are at least as stringent as the DOE requirements under which the plants currently operate. However, in notice and comment rulemaking there is the potential that as a result of public comment on the proposed rule, the final rule may include different criteria. In this connection, commenters should be informed that the DOE has identified oversight operational requirements to be met by the gaseous diffusion plants for the transition period in which DOE continues to regulate the plants, until NRC assumes responsibility for regulatory oversight. The NRC will not assume regulatory oversight authority until after it establishes the final rule and completes the first certification process. The DOE submittal which describes oversight requirements may be reviewed in the NRC Public Document Room.

Also, the Corporation has submitted unsolicited proposed standards for the gaseous diffusion plants which are included as Appendix A to this document. The Commission invites comments on whether some or all of the requirements proposed by the Corporation or contained in the DOE oversight requirements should be used in lieu of those proposed by the Commission. Based on public comments, the Commission will consider whether it should adopt selected portions of them in the final rule. The Commission must determine that the certification process, including any modifications based on public comments, will provide an adequate level of protection of the public health and safety, the environment, and the common defense.

The Commission has also prepared a side-by-side comparison of the proposed regulations with the requirements set forth in DOE's transition document and existing NRC regulations. The document can be reviewed in the NRC Public Document Room. The Commission explicitly invites public comment on whether any of the proposed requirements exceed those necessary to protect the

public health and safety and, if so, whether the added safety protection warrants the costs that would be incurred to implement the requirement.

In addition to the proposed new Part 76, a number of conforming changes are also being proposed to the provisions of Chapter I of Title 10 of the Code of Federal Regulations. These changes would be necessary to implement the new part.

Proposed Action

The Commission is proposing to add a new 10 CFR Part 76 entitled "Certification of Gaseous Diffusion Plants." This new part will include procedural requirements, generally applicable NRC health and safety standards, technical safety requirements, and safeguards and security requirements specific to the gaseous diffusion plants. The Commission will use the requirements included in this new Part 76 to satisfy Energy Policy Act requirements. The certification requirements in this proposed rulemaking include actions that are either required by the Act or required by the Commission's own procedures to protect the public health and safety from radiological hazards, to provide for the common defense and security, and to ensure adequate safeguards.

A. General requirements.

The general requirements being proposed are based on and derived mainly from 10 CFR Part 70. Part 70 contains the regulations used by the Commission to license the possession of special nuclear material at major fuel cycle facilities for which the NRC has regulatory responsibility for protecting

public health and safety, and the common defense and security. Specific proposed sections in this new part, which are based on 10 CFR Part 70, as modified for the certification process, include the following:

Section 76.1 *Purpose*. This section defines the purpose of Part 76 to be limited to certification of the existing 40 year old gaseous diffusion plants previously operated by the Department of Energy. (Reference § 70.1).

Section 76.2 *Scope*. This section defines the scope of Part 76 to cover the operation of gaseous diffusion plants previously operated by DOE and leased to the Corporation, and clarifies the new part applies only to those plants. (Reference § 70.2).

Section 76.4 *Definitions*. This section contains definitions of terms as used in this part. (Reference § 70.4).

Section 76.5 *Communications*. This section describes requirements for oral and written submissions to the Commission. (Reference § 70.5).

Section 76.6 *Interpretations*. This section contains requirements for interpretations authorized by the Commission. (Reference § 70.6).

Section 76.7 *Employee protection*. This section indicates that discrimination is prohibited. (Reference § 70.7).

Section 76.8 *Information collection requirements: OMB approval not required*. This section indicates that the information collection requirements contained in this part need not be reviewed and approved by the Office of Management and Budget in accordance with the paperwork Reduction Act (Reference § 70.8).

Section 76.9 *Completeness and accuracy of information*. This section specifies that all information must be complete and accurate. (Reference § 70.9).

Section 76.10 *Deliberate misconduct*. This section prohibits certain Corporation activities and describes resulting enforcement action. (Reference § 70.10).

Section 76.23 *Specific exemptions*. This section specifies that the Commission may grant exemptions. (Reference § 70.14).

Section 76.76 *Backfitting*. This section sets forth the conditions for backfitting the plants and establishes backfit guidelines. (Reference § 50.109).

Section 76.81 *Authorized use of radioactive material*. The section sets forth requirements for the Corporation's possession and use of radioactive material. (Reference § 70.41).

Section 76.83 *Transfer of radioactive material*. This section contains requirements for the Corporation's transfer of radioactive material. (Reference § 70.42).

Section 76.89 *Criticality accident requirements*. This section contains monitoring requirements for criticality accidents. (Reference § 70.24).

Section 76.91 *Emergency planning*. This section contains emergency planning requirements. (Reference § 70.22(i)).

Section 76.120 *Reporting requirements*. This section contains requirements for 1-hour notification, 4-hour notification, 24-hour notification, and for preparation and submission of reports. (Reference § 70.50, § 70.52, and § 74.11).

Section 76.121 *Inspections*. This section states that the Corporation shall afford the Commission opportunity for inspection and that office space for Commission inspection personnel must be provided. (Reference § 70.55).

Section 76.131 *Violations*. This section specifies actions the Commission may take, to include obtaining a court order to prevent a violation and contains civil penalty provisions. (Reference § 70.71).

Section 76.133 *Criminal penalties*. This section specifies criminal sanctions for violations. For purposes of section 223 of the Atomic Energy Act of 1954, as amended, which provides for criminal sanctions, all regulations in Part 76 are issued under one or more of sections 161b, 161i, or 161o except for the sections listed in § 76.133(b). (Reference § 70.72).

B. Procedural requirements.

As directed by Section 1701(c) of the AEA, as amended, the proposed rule contains procedures for the annual certification process. Apart from requiring an annual application for a certificate of compliance and a determination by the Commission, in consultation with EPA, of compliance with the NRC's standards, the legislation does not specify procedures for the certification process. In addition, the amendments to the AEA provide that the requirement for a certificate of compliance is in lieu of any requirement for a license. Thus, the NRC has substantial discretion in determining appropriate procedures for the certification process. By providing for public notice and a written comment period with respect to an application for a certificate of compliance, as well as the opportunity for the Corporation and other interested parties to petition the Commission for review of the decision to grant or deny a certificate or request for approval of a compliance plan, the Commission believes that it is proposing a fair and efficient procedural scheme.

The procedural requirements being proposed for the certification process, to implement provisions of the Act and to constitute the Commission's proposed certification process, include:

Section 76.21 *Certificate required*. This section contains the requirement to obtain a certificate of compliance to operate the gaseous diffusion plants. (Reference the Act).

Section 76.31 *Annual application requirement*. This section specifies the annual application requirements for the certificate of compliance. (Reference the Act).

Section 76.33 *Application procedures*. This section contains filing requirements and specifies the required contents of the application.

Section 76.37 *Federal Register notice*. This section concerns public notice of the filing of an application and the opportunity for public comment.

Section 76.39 *Public meeting*. This section describes the procedures for a public meeting on the application to be held at the discretion of the Director, Office of Nuclear Material Safety and Safeguards (NMSS), NRC, and provisions for a transcript of a meeting. A public meeting will be held on the first certification application.

Section 76.41 *Record underlying decisions*. This section specifies that any decision must be based on information in the record and that significant information on any proceeding, with limited exceptions, must be part of the public docket. This is not intended to constitute a requirement of adjudication on the record after opportunity for agency hearing under the Administrative Procedure Act.

Section 76.43 *Annual date for decision*. This section describes the timing of the annual decision on the application by the Director, NMSS.

Section 76.45 *Application for amendment of certificate*. This section states the procedure for the Corporation to apply for an amendment of a certificate prior to the established date of the next application for a certificate.

Section 76.51 *Conditions of certification*. This section requires compliance by the Corporation with all requirements set forth and referenced in Part 76 or in a certificate of compliance or approved compliance plan.

Section 76.53 *Consultation with Environmental Protection Agency (EPA)*. This section requires that the Commission will consult with the EPA in making the annual decision on the application for a certificate, including the provisions of any compliance plan.

Section 76.55 *Timely renewal*. This section states that timely and sufficient filing of an application for a certificate of compliance maintains in effect any existing certification or approved compliance plan until issuance of a final and effective decision on the application. This addresses the unlikely situation in which the Commission is unable to make its final, annual determinations regarding an application for a certificate of compliance despite the filing of a sufficient application. In this case, the Commission will deem its prior determinations regarding compliance to be its current and effective determinations until final resolution of the subsequent application and will advise Congress accordingly in its annual report under section 1701(b) of the AEA, as amended. The Commission invites commenters to specifically address this proposal.

Section 76.60 *Regulatory requirements which apply*. This section specifies the requirements which the NRC will apply for certification of the Corporation's operation of the gaseous diffusion plants.

Section 76.62 *Issuance of certificate or approval of compliance plan.*

This section specifies that the Director, NMSS, may issue a certificate or approval of a compliance plan, requires notice of the decision in the Federal Register, and states that the Corporation or affected members of the public who have provided comments in the proceeding may seek the Commission's review of the Director's decision.

Section 76.64 *Denial of certificate or compliance plan.* This section states that the Director, NMSS, may deny a certificate or compliance plan and that the denial must be noticed in the Federal Register. This section also provides an opportunity for action by the Corporation before denial. It also states that the Corporation or affected members of the public who have provided comments on the application may seek the Commission's review of the Director's decision.

Section 76.68 *Plant changes.* This section describes plant or operational changes permitted by the Corporation with or without prior Commission approval. Documentation of revisions that do not require Commission approval must be submitted to the NRC. For changes that require Commission approval the Corporation may apply for an amendment of a certificate under section 76.45.

Section 76.70 *Post issuance.* This section specifies procedures for amendment, revocation, suspension, or amendment for cause of the certificate.

Section 76.72 *Miscellaneous procedural matters.* This section addresses procedures for filing petitions, ruling on matters of procedure, and communication between Commission and staff. Additional guidance regarding the filing and service of petitions for review of the Director's decision and

responses to such petitions may be included in the Director's decision or by order of the Commission.

Except for proceedings under 10 CFR Part 2, Subpart G for imposition of a civil penalty, the Commission is not imposing restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of this regulatory process. Staff would not participate in a review of the Director's decision as a party, but rather would serve as an advisor to the Commission. Congress has not required formal adjudication, and the Commission believes that informal processing without such formal restrictions on communication are best suited for resolution of applications for a certificate on an annual basis.

C. Technical safety requirements.

The major technical safety requirements proposed are found in the following sections:

Section 76.35 *Contents of applications*. This section specifies that applications must include a safety analysis report, a compliance status report which includes environmental and effluent monitoring data, a quality assurance program description, a description of use of radioactive material, a description of the training program, a nuclear material control and accounting plan, a physical protection plan for special nuclear material in transit, a plant physical security plan, an emergency plan, a plan for security facility approval and protection of classified information and hardware, a description of the Corporation's response necessary to implement International Atomic Energy Agency safeguards, and a description of the waste treatment and management program.

The proposed paragraphs 76.35(k) and (l), would require a description of the depleted uranium and waste management programs, including funding plans to assure availability of funds to implement the programs. The Commission is aware that DOE has established a decommissioning fund (See 58 FR 41160; (August 2, 1993) 10 CFR Part 76, "Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities" for a description of the fund's and DOE's requirements), and is inclined to interpret that the NRC has no regulatory jurisdiction in the area of decommissioning funds. The Commission is inclined to interpret the Act to terminate NRC regulatory jurisdiction over the Department's gaseous diffusion plants if and when the Corporation ceases operations and the plants are brought to a cold shutdown condition. Oversight responsibility would then revert to DOE which will be responsible for the plants' decontamination and decommissioning including disposal of all wastes and disposition of any depleted uranium at the sites. Under this interpretation, the Corporation's plans for wastes and depleted uranium will therefore be matters for DOE, rather than NRC, to address. The Commission requests comments on appropriate interpretations of the Energy Policy Act of 1992, and after taking into account any such comments, the Commission may eliminate the requirements under 76.35(k) and (l).

The proposed rule would require any application which contains Restricted Data, classified National Security Information, Safeguards Information, proprietary or other withholdable data to be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

Section 76.85 *Assessment of accidents*. This section contains the requirement for performance of a safety analysis of the potential for releases of radioactive material from accidents.

Specifically, the proposed rule requires that a safety analysis of the site activities be performed to evaluate the potential for releases of radiological material from the existing plants. The analysis would evaluate releases from a reasonable spectrum of postulated accident scenarios which may occur in the gaseous diffusion plants taking into account the existing systems in operation, including procedures, that are intended to mitigate the consequence of any release. These potential releases, together with operational practices and site characteristics, including meteorology, are to be used to evaluate the potential onsite and offsite radiological consequences.

The Corporation must provide a level of protection against accidents during plant operations sufficient to provide adequate protection of the public health and safety. In assessing the level of protection provided by the Corporation, the operational safety objectives to be used by the Commission will be that no individual at the site boundary would be likely to receive a total radiation dose to the whole body in excess of .25 Sv (25 rems) (total effective dose equivalent). The Corporation must also provide an assessment of public health and safety as a result of an intake of soluble uranium in an amount that can be considered as equivalent in risk to a .25 Sv (25 rems) acute radiation dose. The proposed .25 Sv (25 rems) objective was chosen because there is little risk of permanent damage in the event of an accidental release and it is also used in 10 CFR Part 100 for Part 50 licensees. The above objectives will be used by NRC as a factor to assist in

arriving at an overall public health and safety determination, and it does not constitute a siting criterion for the uranium enrichment plants. Instead, it should be used by the Corporation as an operational goal, and the Corporation should accordingly provide information pertaining to specifications for conducting plant operations that would result in this goal being met or that adequate supplementary protective measures are developed and implemented.

In proposing that the Corporation evaluate intakes of soluble uranium the Commission recognizes that the chemical toxicity of uranium could be the limiting factor in the accident analyses under this section. The Commission's intent to use chemical toxicity considerations in Part 76 is consistent with its practice elsewhere (e.g., 10 CFR 20.1201(e)), and prevents any potential regulatory gap in public protection against the toxic effects of soluble uranium. In this regard, the NRC staff has placed a contract to conduct an extensive evaluation of the available international literature on the toxic effects of uranium in humans, with emphasis on sensitive populations such as children and pregnant women which were not evaluated in earlier NRC studies. This review will encompass the present regulatory structure in place in various U.S. government agencies and should identify any inconsistencies in approach or level of protection achieved for both occupational and public exposures to uranium to determine an acceptable basis for evaluating the gaseous diffusion plants. The results of this analysis will be available by July, 1994, and will be considered in evaluating the Corporation's application.

The Commission is interested in comments on the use of safety objectives, including suggested limiting values with supporting rationale, and whether or not they should be included as part of the rule.

In a related matter, the NRC staff recently announced that it is developing guidance and regulatory requirements on integrated safety analysis (ISA) of licensed fuel cycle facilities (58 FR 40167; July 27, 1993). An ISA is a systematic review process by which a licensee or applicant will analyze its facility and processes and will assemble essential information for the safety analysis report. It is too early to determine how this effort will affect the gaseous diffusion plants. However, when a determination is made in the future regarding any additional safety analysis requirements for licensed fuel cycle facilities or the methodology for implementing them, the applicability of these methodologies to gaseous diffusion plants will also be addressed.

Section 76.87 *Technical safety requirements*. This proposed section specifies that safety requirements must be included in the application. Safety topics to be considered are those mainly associated with the plant operations, management controls, and confinement of radioactive material.

The proposed rule requires the Corporation to include technical safety requirements derived from analyses and evaluations included in the safety analysis report. These safety requirements would include safety limits and limiting control settings within which process variables would be maintained for adequate control to guard against the uncontrolled release of radioactivity. The safety requirements would also include limiting conditions for operation, surveillance requirements, design features, and administrative controls. The requirements are similar to operating technical specifications or license conditions applied to nuclear fuel cycle plants to assure that operations are controlled as described in the safety analysis report.

Section 76.93 *Quality assurance*. This section requires a quality assurance program. The Commission recognizes that the GDPs are fuel cycle facilities and that the appropriate quality assurance (QA) for GDPs is not the same as for reactors. The GDPs are existing plants and they were designed, constructed, and assembled over 40 years ago. The QA requirements for the GDPs will be based on applying the applicable QA criteria of ASME NQA-1-1989, "Quality Assurance Program Requirements for Nuclear Facilities", in a graded approach and to an extent that is commensurate with the importance to safety.

Section 76.95 *Training*. This section requires a description of the training program, that will be provided to personnel to enable them to perform the functions of their jobs, including information on the positions for which training will be provided, to assure that personnel are qualified to operate and maintain the plants safely and in compliance with the regulatory requirements.

D. Incorporation of existing regulations.

In addition, portions of other existing Commission regulations will be applicable for certification of the Corporation's operation of the gaseous diffusion plants (proposed § 76.60). They are contained in Title 10, Code of Federal Regulations as follows:

Requirements for notices, instructions, and reports to workers are contained in 10 CFR Part 19, "Notices, Instructions, and Reports To Workers: Inspection and Investigations." Part 19 specifies the requirements for notices, instructions, and reports by the Corporation to individuals participating in gaseous diffusion activities. It also sets forth the rights

and responsibilities of the Commission and individuals during interviews on any matter within the Commission's jurisdiction.

Requirements for protection against ionizing radiation are contained in 10 CFR Part 20, "Standards For Protection Against Radiation." Part 20 specifies the requirements to control the receipt, possession, use, storage, transfer, and disposal of byproduct, source, and special nuclear material by the Corporation in such a manner that the total dose to an individual (including doses resulting from radioactive material and from radiation sources other than background radiation) does not exceed the standards for protection against radiation prescribed by the NRC for normal operating conditions and anticipated operational occurrences.

Requirements for reporting of defects and noncompliance are contained in 10 CFR Part 21, "Reporting of Defects and Noncompliance." Part 21 specifies the procedures and requirements for persons to notify the Commission immediately of component defects or failure to comply with regulatory requirements which could create a substantial safety hazard.

Requirements for fitness-for-duty programs are contained in 10 CFR Part 26, "Fitness-for-Duty Programs." It is the purpose of Part 26 to prescribe requirements and standards for establishment and maintenance of fitness-for-duty programs to reduce the likelihood of theft or diversion of strategic special nuclear material. The requirements of this part are relevant only to the extent that the Corporation elects to engage in activities which involve formula quantities of strategic special nuclear material.

Requirements for packaging and transportation are contained in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." It is the

purpose of Part 71 to establish requirements and procedures for packaging, preparation for shipment, and transportation of radioactive material.

Requirements for physical security and material control and accounting are contained in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," Part 73, "Physical Protection of Plants and Materials," and Part 74, "Material Control and Accounting of Special Nuclear Material," as specified in Subpart E to this part. It is the purpose of Subpart E to identify the specific sections that establish the requirements and procedures for transfer, protection at fixed sites and in transit, and control and accounting of the various enrichments of U-235 covered under the certification.

Safeguards regulation of special nuclear material is conducted on a graded basis. The grades reflect the importance of specified kinds and quantities of material to the public safety and to the common defense and security. Three grades of material are defined in Commission regulations. In declining order of importance they are:

- (1) Formula quantities of strategic special nuclear material (also referred to by the shorter phrase "Category I material");
- (2) Special nuclear material of moderate strategic significance (Category II), and
- (3) Special nuclear material of low strategic significance (Category III).

The gaseous diffusion plants are to produce only Category III material and only the safeguards for that grade of material need apply to production activities. Nonetheless, the Commission recognizes that the Corporation may need to or may opt to engage in nonproduction activities that involve the

other categories of material. One reason stems from the fact that in the past, the Portsmouth plant has produced high enriched uranium hexafluoride (UF_6). As a result of this past production, there may be portions of the plant under lease by the Corporation or to which the Corporation will have access that will continue to have high enriched UF_6 fixed to interior surfaces of process equipment. Additionally, some areas, such as the analytical laboratory, may continue to have a high enriched inventory. A second reason stems from the possibility that the Corporation may elect to engage in nonproduction business activities that involve high enriched UF_6 . To be responsive to the full range of possible Corporation activities, safeguards regulations for all three categories of material are listed in Subpart E and are to be applied in accordance with the categories of material the Corporation actually uses, possesses, or has access to.

Requirements for security facility approval and protection of classified matter are contained in 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data." It is the purpose of Part 95 to establish requirements and procedures for the foregoing matters. The Corporation and its contractor personnel will be considered as authorized by the Commission under 95.35(a) for access to classified matter based on their DOE access authorizations.

NRC does not intend to incorporate any additional requirements for personnel security screening for access to or control over special nuclear material as contained in 10 CFR Part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material," should the Corporation elect to engage in activities which involve

strategic special nuclear material. The requirements for this separate access program are met by the DOE access authorization program for the GDPs.

E. Overview of the certification process.

The Act specifically provides for the NRC to issue a certificate of compliance, in lieu of a license. The Commission intends that the certificate would be a relatively simple document, which certifies compliance with NRC requirements, subject to any applicable conditions, and subject to the Corporation's adherence to the representations and commitments in its application.

The initial certification would be based on review of an application submitted by the Corporation. The initial application would contain a complete description of operations, a safety analysis, and other information required to demonstrate compliance with NRC requirements. Subsequent applications could reference previously submitted information. For annual reviews after the initial certification, the Commission would focus on new information and changes from the previous year, and public comments. The Commission anticipates that it will perform a complete review, similar to that performed for the initial certification, every 10 years. This would correspond to the license renewal period for other fuel facilities.

The proposed rule also allows for unscheduled submittals in cases where the Corporation proposes new or modified operations, and cannot wait for the annual certification because of the significant nature of the modification. In such cases, the Commission could issue an amended certification.

In cases where either the Corporation or the Commission identifies areas of non-compliance, a compliance plan would be submitted for NRC approval as provided in the Act.

The Commission intends that the annual certification process will follow a predictable schedule, with an application being filed in April, publication of a Federal Register notice shortly thereafter providing at least 30 days for public comment, a certification decision in October, any appeals acted upon by December, and the required report to Congress in January of the next year. However, in cases where there are significant unresolved issues such that the Commission cannot complete certification in a given year, a compliance plan could be developed and approved or, if this is not possible because of time constraints, a "timely renewal" provision allows the previous certification to remain in effect pending resolution. The Commission would still file an annual report with Congress, and identify the unresolved issues.

A more detailed discussion of the certification process is provided below:

I. INITIAL CERTIFICATION

- The Corporation would be required to initially apply to the Commission for certification six months after promulgation of a final rule (§76.31). Depending on when the final rule is issued, the due date could be as early as January 1, 1995. The application for certification must include: (a) a description of operations, (b) a safety analysis and other information to demonstrate that the Corporation is in compliance

- with NRC requirements, and/or (c) a plan for achieving compliance with respect to any areas of noncompliance with the NRC standards (§76.33).
- The Director, Nuclear Material Safety and Safeguards would promptly publish in the Federal Register a notice of receipt of an application (§76.37). This would include: (a) a notice of opportunity for public comment, with at least a 30 day comment period, and (b) the date of public meetings near each site.
 - The staff would conduct a review based on information in the record and facts officially noticed in the proceeding (§76.41).
 - The staff would consult with EPA on applications received (§76.53).
 - The Director would render a decision within 6 months of receipt of the application (§76.43).

I.A. FINDING OF COMPLIANCE OR APPROVAL OF COMPLIANCE PLAN

- Upon a finding of compliance or approval of a compliance plan, the Director would issue a written decision ((§76.62(a)).
- A notice of the Director's decision would be published in the Federal Register ((§76.62(b)).
- The Corporation or any person whose interest may be affected, and who is on the record having appropriately provided written or oral comments, could file a petition with the Commission within 15 days of the publication of the Federal Register notice ((§76.62(c)).
- Any person who is on the record could file a response to any petition for review within 10 days of the filing of the petition ((§76.62(c)).

- The Commission could adopt, modify, set aside, or take other appropriate action on the Director's decision within 60 days of publication of the Federal Register notice. Otherwise, the Director's decision would become final and effective ((§76.62(d))).
- Once the initial certification became final and effective, the NRC would assume regulatory jurisdiction over the facilities.
- The Commission would report to Congress in January following initial certification on the status of health, safety, and environmental conditions at the plants.

I.B. FINDING OF NON-COMPLIANCE OR DISAPPROVAL OF COMPLIANCE PLAN

- The Director could make an initial finding of non-compliance or not approve a compliance plan upon review of a written finding that the application is in non-compliance with one or more of the Commission's requirements, or that the compliance plan is inadequate to protect the public health and safety, environment, or common defense and security ((§76.64(a))).
- Before making a final finding of non-compliance, the Director would advise the Corporation in writing of any areas of non-compliance, and offer the Corporation an opportunity to submit a proposed compliance plan regarding those areas of non-compliance ((§76.64(c))).
- Upon making a final determination of non-compliance, the Director would publish notice of the decision in the Federal Register ((§76.64(b))).
- The Corporation or any person whose interest could be affected, and who is on the record having appropriately provided written or oral comments,

could file a petition with the Commission within 15 days of the publication of the Federal Register notice ((§76.64(d)).

- Any person who is on the record could file a response to any petition for review within 10 days of the filing of the petition ((§76.6(d)).
- The Commission could adopt, modify, set aside, or take other appropriate action on the Director's decision within 60 days of the Federal Register notice of the decision. Otherwise, the Director's decision would become final and effective. ((§76.64(e)).
- The Commission would report to Congress in January following initial certification on the status of health, safety, and environmental conditions at the plants.

II. ANNUAL CERTIFICATION

- After the initial application, annual application for certification would be required to be received by April 15 of each year (§76.31).
- Information contained in previous applications, statements, or reports filed with the Commission could be incorporated by reference ((§76.33(f)).
- The Director would promptly publish in the Federal Register a notice of receipt of an application (§76.37). This would include a notice of opportunity for public comment for at least 30 days. It could also include a notice of public meetings if they are determined by the Director to be in the public interest.
- The Commission review would focus on new and previously unreviewed information and public comments.

- The Director's decision would be rendered on review of a satisfactory application by October of each year.
- The Director's decision would result in a:
 - (A) Finding of compliance or approval of compliance plan (see I.A.),
or
 - (B) Finding of non-compliance or disapproval of compliance plan (see I.B.).

III. AMENDMENT OF CERTIFICATE

- The Corporation could make changes to a plant or a plant's operation without prior Commission approval that do not reduce the safety margin, result in undue risk to the public health and safety, environment, and the common defense and security, or present an unreviewed safety question (§76.68).
- The Corporation could at any time apply for amendment of the certificate to cover unreviewed information on new or modified activities not addressed in the certificate. The submittal should contain sufficient information for the Director to make findings of compliance for the proposed activities as required for any other certification (§76.45).
- Information contained in previous applications, statements, or reports filed with the Commission could be incorporated by reference in any application for amendment (§76.33(f)).
- The Director would promptly publish a Corporation request for amendment of the certificate in the Federal Register as a notice of an application (§76.37). This would include a notice of opportunity for public

comment. It could also include a notice of a public meeting if the Director determines that a meeting is in the public interest.

- The Director's decision would be rendered within 6 months of receipt of a satisfactory request to modify the safety basis or compliance status of the plant.
- The Director's decision would result in a:
 - (A) Finding of compliance or approval of compliance plan (see I.A.),
or
 - (B) Finding of non-compliance or disapproval of compliance plan (see I.B.).

IV. TIMELY RENEWAL

In any case where the Corporation has filed a timely application for certification or a compliance plan, the existing certification or compliance plan would not expire until the Commission has made a determination on the Corporation's submittal (§76.55).

Commissioner Rogers' Additional Comments

Section 76.76 of the Proposed Rule addresses backfitting. I would be particularly interested in comments on two issues regarding the provisions of that section. These are (1) whether the provisions of Section 76.76 should become effective immediately when 10 CFR 76 becomes final, as would happen were the proposed section to remain unchanged, or whether there should be some interim before these provisions become effective (e.g. until completion of the

first annual certification following initial certification) and (2) whether the standard for requiring a backfit should be that of Section 76.76(a)(3), "... a substantial increase in the overall protection of the public health and safety or the common defense and security ..." or the less stringent standard of cost-effectiveness that is contained in Section 1(b)(6) of Executive Order 12866 of September 30, 1993, "... a reasoned determination that the benefits of the intended regulation justify its costs."

I raise these questions because the Corporation and the NRC have only recently been given their respective responsibilities for the operation and regulation of the gaseous diffusion plants, and therefore, have had no prior corporate experience with these responsibilities. While I have every confidence in the ability of both organizations to carry out their responsibilities with a high degree of competence, I expect that there will be a period during which both organizations will gain additional knowledge about the configuration and functioning of the plants.

Some of this new knowledge could suggest changes that would be worthwhile from the standpoint of public health and safety or safeguards. Moreover, while the NRC becomes more knowledgeable about the regulation of these plants, it also will be re-examining and considering changes to 10 CFR Part 70, the regulation that served as a model for proposed 10 CFR Part 76. This re-examination was started as a result of incidents that occurred at major materials facilities and could lead to changes that also could have safety implications for 10 CFR Part 76. For these reasons I would be interested in comments on the potential advantages and disadvantages of delaying the effectiveness of Section 76.76 for an appropriate interim.

With regard to the standard for imposing backfits, proposed Section 76.76(a)(3) would require that a potential backfit meet the same standard as that applied to potential nuclear power reactor backfits that is contained in 10 CFR 50.109(a)(3). This standard has imposed a salutary discipline on the Commission in its regulation of nuclear power reactors. However, when this standard was first established in 1970, the regulations applicable to nuclear power reactors had already been through a period of evolution. When the Commission confirmed the standard in 1985, these regulations had again undergone some considerable evolution as a result of lessons learned from the Three Mile Island accident. 10 CFR Part 76 has had no similar evolution. Accordingly, I would be interested in comments on the advantages and disadvantages of substituting the less stringent standard contained in Section 1(b)(6) of Executive Order 12866 for the standard proposed in Section 76.76(a)(3), at least for some period of time after 10 CFR Part 76 becomes final.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on a DOS-formatted (IBM compatible) 5.25 or 3.5 inch computer diskette. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Finding of No Significant Environmental
Impact: Availability; Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The two plants to be regulated by this rule have already been subject to evaluation in accordance with the National Environmental Policy Act. The Department of Energy has prepared an environmental impact statement for the gaseous diffusion plant in Portsmouth, Ohio¹, and an environmental assessment for the plant in Paducah, Kentucky². The Commission's proposed certification requirements are intended to be at least as stringent as the existing requirements applicable to the two plants which are currently operating and have been operating for nearly 40 years. The promulgation of a rule governing these plants and their subsequent regulation by the NRC will not result in any environmental impacts beyond those which currently exist or would be expected to continue absent NRC regulatory oversight. The NRC environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

¹ Final Environmental Impact Statement, Portsmouth Gaseous Diffusion Plant Site, May 1977, ERDA-1555; Final Environmental Statement, Portsmouth Gaseous Diffusion Plant Expansion, September 1977, ERDA-1549.

² Final Environmental Impact Assessment Of The Paducah Gaseous Diffusion Plant Site, August 1982, DOE/EA-0155.

Similarly, subsequent certificates of compliance including amendments, modifications and renewals issued pursuant to this part will consist of findings of compliance with 10 CFR Part 76. Therefore, such actions will not result in any significant new environmental impacts. Part 51 of Title 10 of the Code of Federal Regulations is being amended to include a categorical exclusion for such certification actions pursuant to Part 76.

Under its procedures implementing NEPA, the Commission may exclude from preparation of an environmental impact statement or an environmental assessment a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC procedures. In this rulemaking, the Commission proposes to find that the issuance, amendment, modification and revision of a certificate of compliance for the Corporation comprise a category of actions which does not individually or cumulatively have a significant effect on the human environment. Actions within this category are similar in that they will be based on a finding by NRC that the Corporation has demonstrated compliance with the requirements in Part 76. As noted above, after conducting an environmental assessment for Part 76, the Commission made a finding of no significant environmental impact, and concluded that Part 76 requirements, if promulgated, would not allow the enrichment facilities to operate in such a way as to result in any adverse environmental effects greater than the existing impacts which have been already evaluated. Accordingly, a Commission finding of compliance with the Part 76 requirements would not have a significant effect on the human environment.

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule of limited applicability apply only to a wholly-owned instrumentality of the United States and affect fewer than ten respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Draft Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities since it only addresses the Corporation's operation of two existing plants which do not fall into this category.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

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 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, 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.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out 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. 553; the NRC is proposing to adopt the following amendments to 10 CFR Parts 19, 20, 21, 26, 51, 70, 71, 73, 74, and 95 and the new 10 CFR Part 76.

PART 19--NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION
AND INVESTIGATIONS

1. The authority citation for Part 19 is revised to read as follows:

AUTHORITY: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C

2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

2. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 39, 40, 60, 61, or Part 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter, and persons required to obtain a certificate of compliance or an approved compliance plan under Part 76 of this chapter. The regulations regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the Nuclear Regulatory Commission other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued pursuant to 10 CFR 2.720.

PART 20--STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095,

2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. Section 20.1002 is revised to read as follows:

§ 20.2 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under Parts 30 through 35, 39, 40, 50, 60, 61, 70, or 72 of this chapter, and to persons required to obtain a certificate of compliance or an approved compliance plan under Part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

PART 21--REPORTING OF DEFECTS AND NONCOMPLIANCE

5. The authority citation for Part 21 is revised to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

6. Section 21.2 is amended by adding paragraph (e) to read as follows:

§ 21.2 Scope.

* * * * *

(e) The regulations in this part apply to each individual, partnership, corporation, or other entity required to obtain a certificate of compliance or approved compliance plan under Part 76 of this chapter.

PART 26--FITNESS-FOR-DUTY PROGRAMS

7. The authority citation for Part 26 is revised to read as follows:

AUTHORITY: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846)

8. Section 26.2 is amended by adding paragraph (d) to read as follows:

§ 26.2 Scope.

* * * * *

(d) The regulations in this part apply to the Corporation required to obtain a certificate of compliance or an approved compliance plan under Part 76 of this chapter only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply to the Corporation and personnel carrying out the activities specified in § 26.2(a)(1) through (5).

PART 51--ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC
LICENSING AND RELATED REGULATORY FUNCTIONS

9. The authority citation for Part 51 is revised to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

10. Section 51.22 is amended by adding paragraph (c)(19) to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(19) Issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment facilities pursuant to 10 CFR Part 76.

PART 70--DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. 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); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) 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).

12. Section 70.1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 70.1 Purpose.

(a) Except as provided in paragraphs (c) and (d) of this section, the regulations of this part establish procedures and criteria for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use, and transfer special nuclear material; and establish and provide for the terms and conditions upon which the Commission will issue such licenses.

* * * * *

(d) As provided in Part 76 of this chapter, the regulations of this part establish procedures and criteria for physical security and material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

PART 71--PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

13. The authority citation for Part 71 is revised to read as follows:

AUTHORITY: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

14. Section 71.0 is amended by adding paragraph (e) to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(e) The regulations in this part apply to any person required to obtain a certificate of compliance or an approved compliance plan pursuant to Part 76 of this chapter if the person delivers radioactive material to a common or contract carrier for transport or transports the material outside the confines of the person's plant or other authorized place of use.

PART 73--PHYSICAL PROTECTION OF PLANTS AND MATERIALS

15. The authority citation for Part 73 is revised to read as follows:

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

16. Section 73.1 is amended by adding paragraph (b)(9) to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(9) As provided in Part 76 of this chapter, the regulations of this part establish procedures and criteria for physical security for the issuance of a certificate of compliance or the approval of a compliance plan.

PART 74--MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

17. The authority citation for Part 74 is revised to read as follows:

AUTHORITY: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

18. Section 74.2 is amended by adding paragraph (d) to read as follows:

§ 74.2 Scope.

* * * * *

(d) As provided in Part 76 of this chapter, the regulations of this part establish procedures and criteria for material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

19. A new Part 76 is added to 10 CFR Chapter I to read as follows:

PART 76--CERTIFICATION OF GASEOUS DIFFUSION PLANTS

Subpart A - General Provisions

Sec.

76.1 Purpose.

76.2 Scope.

76.4 Definitions.

76.5 Communications.

76.6 Interpretations.

76.7 Employee protection.

76.8 Information collection requirements: OMB approval not required.

76.9 Completeness and accuracy of information.

76.10 Deliberate misconduct.

76.21 Certificate required.

76.23 Specific exemptions.

Subpart B - Application

Sec.

76.31 Annual application requirement.

76.33 Application procedures.

76.35 Contents of applications.

76.37 Federal Register notice.

76.39 Public meeting.

76.41 Record underlying decisions.

76.43 Annual date for decision.

76.45 Application for amendment of certificate.

Subpart C - Certification

Sec.

76.51 Conditions of certification.

76.53 Consultation with Environmental Protection Agency.

76.55 Timely renewal.

76.60 Regulatory requirements which apply.

76.62 Issuance of certificate or approval of compliance plan.

76.64 Denial of certificate or compliance plan.

76.68 Plant changes.

76.70 Post issuance.

76.72 Miscellaneous procedural matters.

76.76 Backfitting.

Subpart D - Safety

Sec.

76.81 Authorized use of radioactive material.

76.83 Transfer of radioactive material.

76.85 Assessment of accidents.

76.87 Technical safety requirements.

76.89 Criticality accident requirements.

76.91 Emergency planning.

76.93 Quality assurance.

76.95 Training.

Subpart E - Safeguards and Security

Sec.

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

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

76.115 Special nuclear material of moderate strategic significance - Category II.

76.117 Special nuclear material of low strategic significance - Category III.

76.119 Security facility approval and safeguarding of National Security Information and restricted data.

Subpart F - Reports and Inspections

Sec.

76.120 Reporting requirements.

76.121 Inspections.

76.123 Tests.

Subpart G - Enforcement

Sec.

76.131 Violations.

76.133 Criminal penalties.

AUTHORITY: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, 106 Stat. 2392, 2951-53 (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5841, 5842). Sec. 76.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

Subpart A - General Provisions

§ 76.1 Purpose.

(a) This part establishes requirements that will govern the operation of the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky. These requirements are promulgated to protect the public health and safety from radiological hazards and provide for the common defense and security. This part also establishes the certification process that will be used to ensure compliance with the established requirements.

(b) The regulations contained in this part are issued pursuant to the Atomic Energy Act of 1954, as amended; Title II of the Energy Reorganization Act of 1974, as amended; and Title XI of the Energy Policy Act of 1992.

§ 76.2 Scope.

The regulations in this part apply only to the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky leased by DOE to the Corporation. This part also gives notice to all persons who knowingly provide to the Corporation or any contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to the activities subject to

this part that they may be individually subject to NRC enforcement action for violation of § 76.10.

§ 76.4 Definitions.

As used in this part:

Act means the Atomic Energy Act of 1954 (68 Stat 919), and includes any amendments to the Act.

Administrative controls means the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to ensure operation of the plant in a safe manner.

Agreement State means any State with which the Commission has entered into an effective agreement under subsection 274b. of the Act. *Non-Agreement State* means any other State.

Atomic energy means all forms of energy released in the course of nuclear fission or nuclear transformation.

Certificate of compliance or certificate means a certificate of compliance issued pursuant to this part.

Classified matter means documents or material containing classified information.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Common defense and security means the common defense and security of the United States.

Compliance plan means a plan for achieving compliance approved pursuant to this part.

Corporation means the United States Enrichment Corporation (USEC), a wholly-owned corporation of the United States that is authorized under lease from the Department of Energy to operate the gaseous diffusion enrichment plants in Paducah, Kentucky, and Portsmouth, Ohio.

Director means the Director, or his or her designee, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

Department and *Department of Energy* (DOE) means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq.), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974, as amended, (Pub. L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

Depleted uranium means the byproduct residues from the uranium enrichment process in which the concentration of the isotope U_{235} is less than that occurring in natural uranium.

Effective dose equivalent means the sum of the products of the dose equivalent to the body organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated, as defined in 10 CFR Part 20 (§§ 20.1001-20.2402).

Effective kilograms of special nuclear material means:

(1) For uranium with an enrichment in the isotope U-235 of 0.01 (1 percent) and above, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and

(2) For uranium with an enrichment in the isotope U-235 below 0.01 (1 percent), its element weight in kilograms multiplied by 0.0001.

Formula quantity means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5(grams U-233+grams plutonium).

Limiting conditions for operation means the lowest functional capability or performance levels of equipment required for safe operation of the plant.

Limiting control settings means settings for automatic alarm or protective devices related to those variables having significant safety functions.

National Security Information means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government Agency other than the Commission or the Department, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974, as amended, (88 Stat. 1244); any State or any political subdivision of or any political entity within a State, any foreign

government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Process means a series of actions that achieves an end or result.

Produce, when used in relation to special nuclear material, means:

(1) To manufacture, make, produce, or refine special nuclear material;

(2) To separate special nuclear material from other substances in which such material may be contained; or

(3) To make or to produce new special nuclear material.

Restricted Data means all data concerning design, manufacture or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Act.

Safety limits means 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.

Sealed source means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

Security facility approval means that a determination has been made by the NRC that a facility is eligible to use, process, store, reproduce, transmit, or handle classified matter.

Source material means source material as defined in Section 11z. of the Act and in the regulations contained in Part 40 of this Chapter.

Special nuclear material means:

(1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of Section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched in any of the foregoing, but does not include source material.

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance, as defined in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), or 15 grams of uranium-233, or 15 grams of plutonium, or the combination of 15 grams when computed by the equation, $\text{grams} = (\text{grams contained U-235}) + (\text{grams plutonium}) + (\text{grams U-233})$; or

(2) Less than 10,000 grams but more than 1000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope), or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1000 grams when computed by the equation, $\text{grams} = (\text{grams contained U-235}) + 2 (\text{grams U-233} + \text{grams plutonium})$; or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

Special nuclear material scrap means the various forms of special nuclear material generated during chemical and mechanical processing, other than recycle material and normal process intermediates, which are unsuitable for use in their present form, but all or part of which will be used after further processing.

Strategic special nuclear material means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium.

Surveillance requirements means requirements relating to test, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that plant operation will be within the safety limits, and that the limiting conditions of operation will be met.

United States, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

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.

§ 76.5 Communications.

Except where otherwise specified, all correspondence, reports, applications, and other written communications submitted pursuant to 10 CFR Part 76 should be addressed to the Director, Office of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and copies sent to the NRC Region III Office (shown in Appendix D of Part 20 of this Chapter) and the Resident Inspector. Communications and reports may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at 2120 L Street, NW., Washington DC.

§ 76.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 76.7 Employee protection.

(a) Discrimination by the Corporation, or a contractor or subcontractor of the Corporation against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or attempting to assist or participate in, the above activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs by filing a complaint alleging the

violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by the Corporation, or a contractor or subcontractor of the Corporation may be grounds for:

(1) Denial, revocation, or suspension of the certificate.

(2) Other enforcement action.

(d) Actions taken by an employer, or others which adversely affect an employee may be predicated upon nondiscrimination grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) The Corporation shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the certificate, and for 30 days following certificate termination.

(2) The Corporation shall notify its contractors of the prohibition against discrimination for engaging in protected activities.

(3) Copies of NRC Form 3 may be obtained by writing to the NRC Region III Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Office of Information Resource Management, Division of Information Support Services, Information and Records Management Branch.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to Section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

§ 76.8 Information collection requirements: OMB approval not required.

The information collection requirements contained in this part of limited applicability apply to a wholly-owned instrumentality of the United States and affect fewer than ten respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

§ 76.9 Completeness and accuracy of information.

(a) Information provided to the Commission or information required by statute or by the Commission's rules, regulations, standards, orders, or other conditions to be maintained by the Corporation must be complete and accurate in all material respects.

(b) The Corporation shall notify the Commission of information identified as having for the regulated activity a significant implication for public health and safety or common defense and security. The Corporation violates this paragraph only if the Corporation fails to notify the Commission of information that the Corporation has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Administrator of NRC's Region III Office within 2 working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

§ 76.10 Deliberate misconduct.

(a) The Corporation or any employee of the Corporation and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, who knowingly provides to the Corporation, or any contractor or subcontractor, components, equipment, materials, or other goods or services, that relate to the Corporation's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate or approval issued by the Commission, or

(2) Deliberately submit to the NRC, the Corporation, or its contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(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.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate or approved compliance plan issued by the Director, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of the Corporation, contractor, or subcontractor.

§ 76.21 Certificate required.

The Corporation or its contractors may not operate the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky without the issuance of a certificate of compliance, or an approved compliance plan, pursuant to this part. Except as authorized by the NRC under other provisions of this chapter, no person other than the Corporation or its contractors may acquire, deliver, receive, possess, use, or transfer radioactive material at the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky.

§ 76.23 Specific exemptions.

The Commission may, upon its own initiative or upon application of the Corporation, grant such exemptions from the requirements of the certification regulations as it determines are authorized by law and will not endanger life,

or property, or the common defense and security, and are otherwise in the public interest.

Subpart B - Application

§ 76.31 Annual application requirement.

The Corporation shall apply to the Commission each year,¹ on or before April 15, for a certificate of compliance with the Commission's regulations for the gaseous diffusion plants leased from the Department.

§ 76.33 Application procedures.

(a) Filing requirements. An application for certificate of compliance shall be tendered by filing 20 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and Resident Inspector, in accordance with § 76.5 of this part.

(b) Oath or affirmation. An application for certificate of compliance must be executed in a signed original by a duly authorized officer of the Corporation under oath or affirmation.

(c) Contents of application. The annual application for a certificate of compliance must contain:

- (1) The information set forth in § 76.35.

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

(2) A plan for achieving compliance with respect to any areas of noncompliance with the NRC's regulations that are identifiable by the Corporation at the time of the filing of the application, including:

- (i) A description of the areas of noncompliance;
- (ii) A plan of actions and schedules for achieving compliance;
- (iii) A justification for continued operation with adequate safety and safeguards; and
- (iv) Sufficient information for the Commission to prepare an environmental assessment.

(d) Pre-filing consultation. The Corporation may confer with the Commission's staff prior to filing an application.

(e) Additional information. At any time during the review of an application, the Corporation may be required to supply additional information to the Commission's staff in order to enable the Commission or the Director, as appropriate, to determine whether the certificate should be issued or denied, or to determine whether a compliance plan should be approved.

(f) Incorporation by reference. Information contained in previous applications, statements, or reports filed with the Commission may be incorporated by reference, provided that the reference is clear and specific.

§ 76.35 Contents of applications.

The application for a certificate of compliance must include the information identified in this section.

(a) A safety analysis report which must include the following information:

(1) The activities involving special nuclear material and the general plan for carrying out these activities;

(2) The name, amount, and specifications (including the chemical and physical form and, where applicable, isotopic content) of the special nuclear material, source and byproduct material the Corporation proposes to use, possess or produce, including any material held up in equipment from previous operations;

(3) The qualifications requirements, including training and experience, of the Corporation's management organization and key individuals responsible for safety in accordance with the regulations in this chapter;

(4) A training program that meets the requirements of § 76.95 of this part;

(5) A description of equipment and facilities which will be used by the Corporation to protect health and minimize danger to life or property (such as handling devices, working areas, shields, measuring and monitoring instruments, devices for the treatment and disposal of radioactive effluent and wastes, storage facilities, provisions for protection against natural phenomena, fire protection systems, criticality accident alarm systems, etc.);

(6) A description of the management controls and oversight program to ensure that activities directly relevant to nuclear safety and safeguards and security are conducted in an appropriately controlled manner that ensures protection of employee and public health and safety and protection of the national security interests; and

(7) A description of the plant site, and a description of the principal structure, systems, and components of the plant.

(b) A quality assurance program that meets the requirements of § 76.93 of this part.

(c) Technical safety requirements in accordance with § 76.87 of this part. A summary statement of the bases or reasons for the requirements, other than those covering administrative controls, shall also be included in the application, but may not become part of the technical safety requirements.

(d) An emergency plan that meets the requirements of § 76.91 of this part.

(e) A fundamental nuclear material control plan which describes the measures used to control and account for special nuclear material that the Corporation uses, possesses, or has access to. The plan must describe, as appropriate:

(1) How formula quantities of strategic special nuclear material will be controlled and accounted for in accordance with the relevant requirements of Subpart E;

(2) How special nuclear material of moderate strategic significance will be controlled and accounted for in accordance with the relevant requirements of Subpart E; and

(3) How special nuclear material of low strategic significance will be controlled and accounted for in accordance with the relevant requirements of Subpart E.

(f) A transportation protection plan which describes the measures used to protect shipments of special nuclear material of low strategic significance in accordance with the relevant requirements of Subpart E when in transit off site.

(g) A physical protection plan which describes the measures used to protect special nuclear material that the Corporation uses, possesses, or has access to at fixed sites. The plan must describe, as appropriate:

(1) How formula quantities of special nuclear material will be protected against both theft and radiological sabotage in accordance with the relevant requirements of Subpart E;

(2) How special nuclear material of moderate strategic significance will be protected in accordance with the relevant requirements of Subpart E;

(3) How special nuclear material of low strategic significance will be protected in accordance with the relevant requirements of Subpart E; and

(4) The measures used to protect special nuclear material while in transit between protected areas, all of which are located on a single fixed site under the control of the applicant. The level of protection afforded the material while in transit must not be less than that afforded the same material while it was within the protected area from which transit began.

(h) A plan describing the facility's proposed security procedures and controls as set forth in § 95.15 (b) for protection of classified information and hardware.

(i) An application which contains Restricted Data, classified National Security Information, Safeguards Information, proprietary data, or other withholdable information, must be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

(j) In response to a written request by the Commission, the Corporation shall file with the Commission the installation information described in § 75.11 of this chapter on Form N-71. The Corporation shall also permit

verification of this installation information by the International Atomic Energy Agency and take any other action necessary to implement the US/IAEA Safeguards Agreement, as set forth in Part 75.

(k) A description of the program, as appropriate, for processing, management, and disposal of mixed and radioactive wastes generated by operations and depleted uranium. The application must also include a description of the waste streams generated by enrichment operations, annual volumes of waste expected, identification of radioisotopes contained in the waste, physical and chemical forms, and plans for managing the waste.

(l) A description of the funding program to be established to ensure that funds will be set aside and available for the ultimate processing and disposition of depleted uranium and any waste generated. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available to adequately cover conversion of depleted UF_6 to a stable form, as well as ultimate disposition. The financial mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds. The funding program must contain a basis for cost estimates for conversion and disposition of depleted UF_6 , and must include means of adjusting cost estimates and associated funding levels over the life of the plant. The Corporation shall ensure the adequacy of the financing mechanism, considering the volume of generated depleted uranium and any waste and estimates for future generation, in its annual application for certification.

(m) A compliance status report which includes the status of various

state, local and Federal permits, licenses, approvals, and other entitlements, as described in § 51.45(d) of this chapter. The report must include environmental and effluent monitoring data.

§ 76.37 Federal Register notice.

The Director shall publish in the Federal Register:

(a) A notice of the filing of an application (specifying that copies of the application, except for Restricted Data, classified National Security Information, Safeguards Information, proprietary data, or other withholdable information will be made available for the public inspection in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, and in the local public document room at or near the location of the plant);

(b) A notice of opportunity for written public comment on the application; and

(c) The date of any scheduled public meeting regarding the application.

§ 76.39 Public meeting.

(a) A public meeting will be held on an application if the Director, in his or her discretion, determines that a meeting is in the public interest with respect to a decision on the application.

(b) Conduct of public meeting.

(1) The Director shall conduct any public meeting held on the application.

(2) Public meetings will take place near the locale of the subject plant, unless otherwise specified by the Director.

(3) A public meeting will be open to all interested members of the public and be conducted as deemed appropriate by the Director.

(4) Members of the public will be given an opportunity during a public meeting to make their views regarding the application known to the Director.

(5) A transcript will be kept of each public meeting.

(6) No Restricted Data, classified National Security Information, Safeguards Information, proprietary data, or other withholdable information may be introduced at the meeting.

§ 76.41 Record underlying decisions.

(a) Any decision of the Commission or its designee under this part in any proceeding regarding an application for a certificate must be based on information in the record and facts officially noticed in the proceeding.

(b) All public comments and correspondence in any proceeding regarding an application for a certificate must be made a part of the public docket of the proceeding, except as provided under 10 CFR 2.790.

§ 76.43 Annual 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.

§ 76.45 Application for amendment of certificate.

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 for the proposed activities as required for the original certificate.

Upon receipt of the Corporation's application for amendment of the certificate, the Director will determine whether the proposed activities are significant, and if so, follow the procedures specified in §§ 76.37 and 76.39. If the Director determines that the activities are not significant the Director will, after appropriate review, issue a decision pursuant to Subpart C of this part.

Subpart C - Certification

§ 76.51 Conditions of certification.

The Corporation shall comply with all of the requirements set forth and referenced in this part or set forth in the certificate of compliance or in an approved compliance plan.

§ 76.53 Consultation with Environmental Protection Agency.

In reviewing an application for a certificate, including the provisions of any compliance plan, the Director shall consult with the Environmental Protection Agency and solicit the Environmental Protection Agency's written comments on the application .

§ 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 Director has made a determination on the application for a certificate of compliance.

§ 76.60 Regulatory requirements which apply.

The Nuclear Regulatory Commission will use the following requirements for certification of the Corporation for operation of the gaseous diffusion plants:

(a) The Corporation shall provide for adequate protection of the public health and safety and common defense and security.

(b) The Corporation shall demonstrate compliance with the provisions of this part.

(c) The Corporation shall demonstrate compliance with the applicable provisions of 10 CFR Part 19, "Notices, Instructions and Reports To Workers: Inspection and Investigations."

(d) The Corporation shall demonstrate compliance with the applicable provisions of 10 CFR Part 20, "Standards For Protection Against Radiation."

(e) The Corporation shall demonstrate compliance with the applicable provisions of 10 CFR Part 21, "Reporting of Defects and Noncompliance."

(f) The Corporation shall demonstrate compliance with the applicable provisions of 10 CFR Part 26, "Fitness-for-Duty Programs." The requirements of this section apply only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in § 26.2(a)(1) through (5).

(g) The Corporation shall demonstrate compliance with the applicable provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

(h) The Corporation shall demonstrate compliance with the applicable provisions for physical security and material control and accounting as specified in Subpart E to this part and contained in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," Part 73, "Physical Protection of Plants and Materials," and Part 74, "Material Control and Accounting of Special Nuclear Material." The requirements in these parts address safeguards for three different kinds of nuclear material: special nuclear material of low strategic significance (Category III), special nuclear material of moderate strategic significance (Category II), and formula quantities of strategic special nuclear material (Category I). The requirements for Category III material apply to the production of low enriched uranium. The requirements for Category II and Category I material apply only if the Corporation elects to engage in activities that involve these kinds of material and then only to the situations and locations that involve these kinds of material.

(i) The Corporation shall demonstrate compliance with the applicable provisions for security facility approval and for safeguarding of classified matter as specified in Subpart E to this part.

§ 76.62 Issuance of certificate or approval of compliance plan.

(a) Upon a finding of compliance with the Commission's regulations for issuance of a certificate or approval of a compliance plan, the Director shall

issue a written decision explaining the decision. The Director may impose such terms and conditions as deemed appropriate.

(b) The Director shall publish notice of the decision in the Federal Register.

(c) The Corporation, or any person whose interest may be affected who submitted written comment in response to the Federal Register Notice on the application or compliance plan under § 76.37, or who provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the Federal Register Notice. Any person described above may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the Federal Register Notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt by order such further procedures as in its judgment would serve the purpose of review of the Director's decision.

(d) The Commission may adopt, modify, or set aside the findings, conclusions, conditions or terms in the Director's decision and will state the basis of its action in writing.

§ 76.64 Denial of certificate or compliance plan.

(a) The Director may deny an application for a certificate of compliance or not approve a compliance plan upon a written finding that the application is in noncompliance with one or more of the Commission's requirements for the

plant, or that the compliance plan is inadequate to protect the public health and safety or the common defense and security.

(b) The Director shall publish notice of the decision in the Federal Register.

(c) Before a denial of an application for a certificate of compliance, the Director shall advise the Corporation in writing of any areas of noncompliance with the Commission's regulations and offer the Corporation an opportunity to submit a proposed compliance plan regarding those areas of noncompliance identified.

(d) The Corporation, or any person whose interest may be affected and who submitted written comment in response to the Federal Register Notice on the application or compliance plan under § 76.37 or who provided oral comment at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the Federal Register notice. Any person described above may file a response to any petition for review, not to exceed 30 pages, within ten days after filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the Federal Register Notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt by order such further procedures as in its judgment would serve the purpose of review of the Director's decision.

(e) The Commission may adopt, modify, or set aside the findings, conclusions, conditions or terms in the Director's decision and will state the basis of its action in writing.

§ 76.68 Plant changes.

(a) The Corporation may make changes to the plant or to the plant's operations without prior Commission approval provided all the provisions of this section are met.

(1) The Corporation shall conduct a written safety analysis which demonstrates that the changes would not result in undue risk to public health and safety, the common defense and security, or to the environment.

(2) The changes must be authorized by responsible management and approved by the plant safety review committee.

(3) The changes must not decrease effectiveness of the plant's safety, safeguards and security programs.

(4) The changes must not cause projections of the annual individual or cumulative occupational radiation exposures to increase significantly.

(5) The changes must not significantly affect the types of or increase the amounts of effluent released offsite.

(6) The changes must not involve an unreviewed safety question.

(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. These revisions must be submitted within 90 days of their adoption as specified in § 76.33 of this part.

(c) The Corporation shall maintain records of changes in the plant and of changes in the programs, plans, policies, procedures and operations described in the approved application, and copies of the safety analyses on

which the changes were based. The records of plant changes must be retained until the end of the plant's life. The records of changes in procedures must be retained for a period of 2 years.

(d) The Corporation may at any time apply under § 76.45 for amendment of the certificate to cover proposed new or modified activities not permitted by paragraph (a) of this section.

§ 76.70 Post issuance.

(a) Amendment of certificate terms and conditions. The terms and conditions of a certificate of compliance or an approved compliance plan are subject to modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) Revocation, suspension, or amendments for cause. A certificate of compliance or a compliance plan may be revoked, suspended, or amended, in whole or in part for:

(1) Any material false statement in the application or statement of fact required by the Commission in connection with the application;

(2) Conditions revealed by the application, or any report, record, inspection, or other means which would warrant the Commission to refuse to grant a certificate or approve a compliance plan on an original application; and

(3) Violation of, or failure to observe any of, the applicable terms and conditions of the Act, or the certificate of compliance, the compliance plan, or of any rule, regulation, or order of the Commission.

(c) Procedures governing amendment, revocation, or suspension.

(1) Except in cases of willfulness or those in which the public health interest, common defense and security, or safety requires otherwise, no certificate of compliance or compliance plan may be amended, suspended, or revoked unless, before the institution of proceedings therefor, facts or conduct which may warrant the action must have been called to the attention of the Corporation in writing and the Corporation shall have been accorded an opportunity to demonstrate or achieve compliance with the lawful requirements related to such action.

(2) In any proceeding to amend, revoke, or suspend a certificate of compliance or compliance plan, the Commission shall provide the Corporation and other interested persons with an opportunity to provide written views to the Commission. The Commission shall consider these views and may adopt by order further procedures for a hearing of the issues before making a final enforcement decision.

(d) Additional information. At any time after the granting of a certificate of compliance or approval of a compliance plan, the Commission may require further statements from the Corporation in order to enable the Commission to determine whether the certificate or approved compliance plan should be modified or revoked.

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses thereto shall be governed by the procedural requirements set forth in 10 CFR 2.701(a) and (c), 2.708, 2.709, 2.710, 2.711, and 2.712. Additional guidance regarding the filing and service of petitions for review of the Director's decision and

responses to such petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission shall have the authority to rule on procedural matters set forth in 10 CFR 2.772.

(c) There are no restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rule on ex parte communications and separation of functions set forth in 10 CFR 2.780 and 2.781 shall apply to proceedings under 10 CFR Part 2, Subpart G for imposition of a civil penalty.

(d) The procedures set forth in 2.205 of Subpart B, 10 CFR, and in 10 CFR Subpart G, shall 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;

(e) The procedures set forth in 10 CFR 2.206 shall apply to a request by any person to institute a proceeding pursuant to Section 76.70 to amend, revoke, or suspend a certificate of compliance or approved compliance plan, or for such other action as may be proper.

§ 76.76 Backfitting.

(a)(1) Backfitting is defined as the modification of, or addition to, systems, structures, or components of a plant; or to the procedures or organization required to operate a plant; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory

staff position interpreting the Commission rules that is either new or different from a previous staff position.

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

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a plant only when it determines, based on the analysis described in paragraph (b) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that plant are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriately documented evaluation for its finding, any of the following:

(i) That a modification is necessary to bring a plant into compliance with a certificate or the rules or orders of the Commission, or into conformance with written commitments by the Corporation; or

(ii) That regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a plant if it determines that such regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action.

(7) If there are two or more ways to achieve compliance with a certificate or the rules or orders of the Commission, or with written Corporation commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the Corporation is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the plant and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the Corporation in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of plant downtime;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in plant type, design or age on the relevancy and practicality of the proposed backfit;

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No certificate will be withheld during the pendency of backfit analyses required by the Commission's rules.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.

Subpart D - Safety

§ 76.81 Authorized use of radioactive material.

The Corporation shall confine its possession and use of radioactive material to the locations and purposes covered by the certificate or approved compliance plan. Except as otherwise provided, the certificate or approved compliance plan issued pursuant to the requirements in this part entitles the Corporation to receive title to, own, acquire, receive, possess, and use radioactive material in accordance with the certificate.

§ 76.83 Transfer of radioactive material.

(a) The Corporation may not transfer radioactive material except as authorized pursuant to this section.

(b) Except as otherwise provided and subject to the provisions of paragraphs (c) and (d) of this section, the Corporation may transfer radioactive material:

- (1) From one component of the Corporation to another;
- (2) To the Department;
- (3) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission under Section 274 of the Act, if the quantity transferred is not sufficient to form a critical mass;
- (4) To any person exempt from the licensing requirements of the Act and requirements in this part, to the extent permitted under such exemption;

(5) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under the exemption;

(6) To any person authorized to receive such radioactive material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;

(7) To any person abroad pursuant to an export license issued under Part 110 of this chapter; or

(8) As otherwise authorized by the Commission in writing.

(c) Before transferring radioactive material to any party specified in paragraph (b) of this section, the Corporation shall verify that the transferee is authorized to receive the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The Corporation may have in its possession and read a current copy of the transferee's specific license or confirmation of registration. The Corporation shall retain a copy of each license or confirmation for 3 years from the date that it was obtained.

(2) The Corporation shall have in its possession a written confirmation by the transferee that the transferee is authorized by license or registration confirmation to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration confirmation number, issuing agency, and expiration date. The Corporation shall retain the written confirmation as a record for 3 years from the date of receipt of the confirmation;

(3) For emergency shipments, the Corporation may accept a certification by the transferee that he or she is authorized by license or registration certification to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration number, issuing agency, and expiration date, provided that the oral confirmation is confirmed in writing within 10 days. The Corporation shall retain the written confirmation of the oral certification for 3 years from the date of receipt of the confirmation;

(4) The Corporation may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations. The Corporation shall retain the compilation of information as a record for 3 years from the date that it was obtained; or

(5) When none of the methods of verification described in paragraphs (d) (1) to (4) of this section are readily available or when the Corporation desires to verify that information received by one of these methods is correct or up-to-date, the Corporation may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material. The Corporation shall retain the record of confirmation for 3 years from the date the record is made.

§ 76.85 Assessment of accidents.

The Corporation shall perform a safety analysis to establish the basis for limiting conditions for operation of the plant with respect to the

potential for releases of radiological material. Special attention must be directed to assurance that plant operation will be conducted in a manner to prevent or to mitigate the radiological consequences from a reasonable spectrum of postulated accidents which include internal and external events and natural phenomena in order to ensure adequate protection of the public health and safety. Plant operating history relevant to the assessment should be included. In performing this assessment, the full range of operations should be considered including, but not necessarily limited to, operation at the maximum capacity contemplated. The assessment must be performed using an expected release rate resulting from anticipated operational occurrences and accidents with existing systems and procedures intended to mitigate the release consequences, along with site characteristics, including meteorology, to evaluate the offsite radiological consequences.

§ 76.87 Technical safety requirements.

(a) The Corporation shall establish technical safety requirements. In establishing the requirements, the Corporation shall consider the analyses and results of the safety analysis report submitted pursuant to § 76.35.

(b) The format for the technical safety requirements shall be appropriate for each individual requirement.

(c) Each of the following safety topics shall be considered under this section:

- (1) Effects of natural phenomena;
- (2) Building and process ventilation and offgas;
- (3) Criticality prevention;
- (4) Fire prevention;

- (5) Radiation protection;
- (6) Radioactive waste management;
- (7) Maintenance;
- (8) Environmental protection;
- (9) Packaging and transporting nuclear materials;
- (10) Accident analysis;
- (11) Chemical safety;
- (12) Sharing of facilities, structures, systems and components;
- (13) Utilities essential to radiological safety; and
- (14) Operations.

(d) Technical safety requirements shall include items in the following categories:

(1) Safety limits.

(i) If any safety limit is exceeded, corrective action must be taken as stated in the technical safety requirements or the affected part of the process must be shut down unless this action would further reduce the margin of safety.

(ii) The Corporation shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(iii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(2) Limiting control settings.

(i) Where a limiting control setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that protective action, either automatic or manual, will correct the abnormal

situation before a safety limit is exceeded. If, during operation, the automatic alarm or protective devices do not function as required, appropriate action must be taken to maintain the variables within the limiting control-setting values and to repair promptly the automatic devices or to shut down the affected part of the process.

(ii) The Corporation shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(iii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(3) Limiting conditions for operation. When a limiting condition for operation of any process step in the system is not met, the Corporation shall shut down that part of the operation or follow any remedial action permitted by the technical requirements until the condition can be met.

(i) The Corporation shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

(ii) The Corporation shall retain the record of the results of each review until the Commission no longer has certification authority.

(4) Design features. Design features to be included are those systems, components, or structures of the plant which, if altered or modified, would have a significant effect on safety and are not covered in categories described in paragraphs(d)(1), (2), and (3) of this section.

(5) Surveillance requirement.

(6) Administrative controls.

(7) Initial notification. Reports made to the Commission in response to the requirements of this section must be made in accordance with § 76.120 of this part.

§ 76.89 Criticality accident requirements.

(a) Criticality accident requirements. The Corporation shall maintain in each area in which special nuclear material is handled, used, or stored, a monitoring system meeting the requirements of paragraph (b) of this section. The monitoring system must use gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if criticality occurs. This section is not intended to require monitoring systems for transport of special nuclear material packaged in accordance with the requirements of Part 71 of this Chapter.

(b) The monitoring system must be capable of meeting the requirements of paragraph (b)(1) or (b)(2) below.

(1) The system must detect a criticality that produces an absorbed dose in soft tissue of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the reacting material within 1 minute. Coverage of all areas in which special nuclear material is handled, used, or stored must be provided by two detectors.

(2) The system must detect a criticality which generates radiation levels of 300 rems per hour, 1 foot from the source of the radiation. The monitoring devices in the system must have a preset alarm point of not less than 5 millirems per hour (in order to avoid false alarms) nor more than 20 millirems per hour. In no event may any such device be farther than 120 feet from the special nuclear material being handled, used, or stored; lesser

distances may be necessary to meet the requirements of this paragraph on account of intervening shielding or other pertinent factors.

§ 76.91 Emergency planning.

The Corporation shall establish, maintain, and be prepared to follow a written emergency plan. The emergency plan submitted under § 76.35(d) shall include the following information:

(a) Plant description. A description of the plant and area near the plant site.

(b) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(c) Classification of accidents. A system for classifying accidents as alerts or site area emergencies.

(d) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(e) Mitigation of consequences. A description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(f) Assessment of releases. A description of the methods and equipment to assess releases of radioactive materials.

(g) Responsibilities. A description of the responsibilities of all individuals supporting emergency response should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC, as well as a description of responsibilities for developing, maintaining, and updating the plan.

(h) Notification and coordination. A commitment to and a description of the means to promptly notify offsite response organizations, including the request for offsite assistance and medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the plant, and some equipment will not prevent the notification and coordination. The Corporation shall also commit to notify the NRC Operations Center immediately after notification of the appropriate offsite response organizations and not later than one hour after the Corporation declares an emergency. These reporting requirements do not supersede or release the Corporation from complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

(i) Information to be communicated. A description of the types of information on plant status, radioactive releases, and recommended protective actions, if necessary, to be provided to offsite response organizations and to the NRC.

(j) Training. A description of the frequency, performance objectives, and plans for the training that the Corporation will provide workers on how to respond to an emergency including any special instructions, briefings, and orientation tours the Corporation would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. The training shall also prepare site personnel for their responsibilities for the accident scenarios postulated as most probable for the specific site, including the use of team training for these accident scenarios.

(k) Safe Shutdown. A description of the means of restoring the plant to a safe condition after an accident.

(l) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The Corporation shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the accident scenarios shall not be made known to most exercise participants. The Corporation shall critique each exercise using individuals that do not have direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(m) Hazardous chemicals. Confirmation that the Corporation has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, if applicable to the Corporation's activities at the proposed place of use of the special nuclear material.

(n) Comment from offsite response organizations. The Corporation shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the emergency plan before submitting it to NRC. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

§ 76.93 Quality assurance.

The Corporation shall establish, maintain, and execute a quality assurance program satisfying each of the applicable quality assurance criteria of ASME NQA-1-1989, "Quality Assurance Program Requirements for Nuclear Facilities". The Corporation shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety.

§ 76.95 Training.

A training program shall be established, implemented, and maintained for individuals relied upon to operate, maintain, or modify the GDPs in a safe manner. The training program shall be based on a "systems approach to training" (SAT) that includes the following:

- (a) Systematic analysis of the jobs to be performed.
- (b) Learning objectives derived from the analysis which describe desired performance after training.
- (c) Training design and implementation based on the learning objectives.
- (d) Evaluation of trainee mastery of the objectives during training.
- (e) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

Subpart E - Safeguards and Security

§ 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, classified National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Uncontrolled Classified Nuclear Information.

§ 76.113 Formula quantities of strategic special nuclear material

- Category I.

(a) The requirements for material control and accounting for formula quantities of strategic special nuclear material (Category I) are contained in §§ 70.51, 74.11, 74.13, 74.15, 74.17, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82.

(b) The requirements for physical security for formula quantities of strategic special nuclear material (Category I) are contained in §§ 73.20, 73.40, 73.45, 73.46, 73.70, and 73.71.

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material

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

(Category I) are contained in § 73.21. Information designated by the U.S. Department of Energy as Uncontrolled Classified Nuclear Information shall be protected at a level equivalent to that accorded Safeguards Information.

§ 76.115 Special nuclear material of moderate strategic significance

- Category II.

(a) The requirements for material control and accounting for special nuclear material of moderate strategic significance (Category II) are contained in §§ 70.51, 70.52, 70.53, 70.54, 70.57, 70.58, 74.11, 74.13, 74.15, 74.17, 74.81, and 74.82.

(b) The requirements for physical security for special nuclear material of moderate strategic significance (Category II) are contained in §§ 73.67, and 73.71.

§ 76.117 Special nuclear material of low strategic significance

- Category III.

(a) The requirements for material control and accounting for special nuclear material of low strategic significance (Category III) are contained in §§ 70.51, 74.11, 74.13, 74.15, 74.17, 74.33, 74.81, and 74.82.

(b) The requirements for physical security for special nuclear material of low strategic significance (Category III) are contained in §§ 73.67, 73.70, 73.71, and 73.74.

§ 76.119 Security facility approval and safeguarding of National Security Information and Restricted Data.

The requirements for security facility approval and for safeguarding of classified matter are contained in Part 95 of this chapter.

Subpart F - Reports and Inspections

§ 76.120 Reporting requirements.

(a) Immediate report. The Corporation shall notify the NRC Operations Center³ within one hour after discovery of:

(1) A criticality event;

(2) Any loss, other than normal operating loss, of special nuclear material;

(3) Any theft or unlawful diversion of special nuclear material which the Corporation is authorized to possess or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of special nuclear material.

(4) An emergency condition that has been declared as an alert, site area emergency, or general emergency.

(b) Four-hour report. The Corporation shall notify the NRC Operations Center as soon as possible but not later than 4 hours after discovery of an event⁴ that could prevent immediate protective actions necessary to avoid

³ The commercial telephone number for the NRC Operations Center is (301) 951-0550.

⁴Events may include fires, explosions, radiological releases, etc.

releases, or exposures to radiation or radioactive materials that could exceed regulatory limits.

(c) Twenty-four hour report. The Corporation shall notify the NRC Operations Center within 24 hours after the discovery of any of the following events involving radioactive material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B to §§ 20.1001-20.2402 of 10 CFR Part 20 for the material; or

(iii) Causes access to the contaminated area to be restricted for any reason other than to allow isotopes with a half-life of less than 24 hours to decay to a level that would allow decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required to prevent releases, prevent exposures to radiation and radioactive materials exceeding specified limits, mitigate the consequences of an accident, or restore this facility to a preestablished safe condition after an accident;

(ii) The equipment is required to be available and either should have been operating or should have operated on demand; or

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with radioactive contamination on the individual's clothing or body.

(4) A fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B to §§ 20.1001-20.2402 of 10 CFR Part 20 for the material; and

(ii) The damage affects the integrity of the radioactive material or its container.

(d) Record or log requirement. A record or log of all emergency actions carried out in response to an emergency plan shall be made and retained for a period of 2 years.

(e) Preparation and submission of reports. Reports made by the Corporation in response to the requirements of this section shall be made as follows:

(1) Operations Center reports. The Corporation shall make reports required by paragraphs (a), (b) and (c) of this section by telephone to the NRC Operations Center. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the material involved;

(v) Any personnel radiation exposure data available; and

(vi) A description of any actions taken in response to the event.

(2) Written report. A report required by paragraph (a), (b) or (c) of this section shall be followed by a written report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC. 20555-0001, with a copy to the NRC Region III Office listed in Appendix D of Part 20 of this Chapter and the Resident Inspector. The reports must include the following information:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) A description of isotopes, quantities and chemical and physical form of the material involved;

(iv) The date and time of the event;

(v) The causes, including the direct cause, the contributing cause, and the root cause;

(vi) Corrective actions taken or planned and the results of any evaluations or assessments;

(vii) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name; and

(viii) Lessons learned from the event.

§ 76.121 Inspections.

(a) The Corporation shall afford to the Commission at all reasonable times opportunity to inspect the premises and plants where radioactive material is used, produced, or stored.

(b) The Corporation shall make available to the Commission for inspection, upon reasonable notice, records kept pertaining to receipt, possession, use, acquisition, import, export, or transfer of radioactive material.

(c)(1) The Corporation shall provide rent-free office space for the exclusive use of Commission inspection personnel upon request by the Director, Office of Nuclear Material Safety and Safeguards or the NRC Region III Administrator. Heat, air conditioning, light, electrical outlets, and janitorial services must be furnished by the Corporation. The office must be convenient to and have full access to the plant, and must provide the inspector both visual and acoustic privacy.

(2) The space provided must be adequate to accommodate the NRC resident inspection staff, a part-time secretary, and transient NRC personnel. Space must be generally commensurate with other office facilities at the site. The office space that is provided must be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards or the NRC Region III Office. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) The Corporation shall afford any NRC resident inspector assigned to that site or other NRC inspectors identified by the Director, Office of Nuclear Material Safety and Safeguards, as likely to inspect the plant, immediate, unfettered access equivalent to access provided regular plant

employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

§ 76.123 Tests.

The Corporation shall perform, or permit the Commission to perform, any tests the Commission deems appropriate or necessary for administration of the requirements in this part. These tests include tests of:

- (a) Radioactive material;
- (b) Facilities where radioactive material is utilized, produced or stored;
- (c) Radiation detection and monitoring instruments; and
- (d) Other equipment and devices used in connection with the production, utilization or storage of radioactive material.

Subpart G - Enforcement

§ 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 1312(e) of the Atomic Energy Act of 1954, as

amended and Section 206 of the Energy Reorganization Act of 1974, as amended, for a violation of Section 206 of the Energy Reorganization Act of 1974, as amended.

§ 76.133 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Sections 161b, 161i, or 161o of the Act. For purposes of Section 223, all the regulations in Part 76 are issued under one or more of Sections 161b, 161i, or 161o except for the sections listed in paragraph (b) of this section.

(b) The regulations in Part 76 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows; §§ 76.1, 76.2, 76.4, 76.5, 76.6, 76.23, 76.33, 76.35, 76.37, 76.39, 76.41, 76.43, 76.45, 76.53, 76.55, 76.60, 76.62, 76.64, 76.70, 76.72, 76.131, and 76.133.

PART 95--SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL
SECURITY INFORMATION AND RESTRICTED DATA

20. The authority citation for Part 95 is revised to read as follows:

AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, AS AMENDED (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p.398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

21. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees and others regulated by the Commission, including persons required to obtain a certificate of compliance or an approved compliance plan under Part 76 of this chapter, or their contractors, who may require access to National Security Information and/or Restricted Data used, processed, stored, reproduced, transmitted or handled in connection with a license or application for a license, or in connection with a certificate, application for a certificate or an approved compliance plan under Part 76 of this chapter.

22. Section 95.5 is amended by adding the definition of *licensee* to read as follows:

§95.5 Definitions

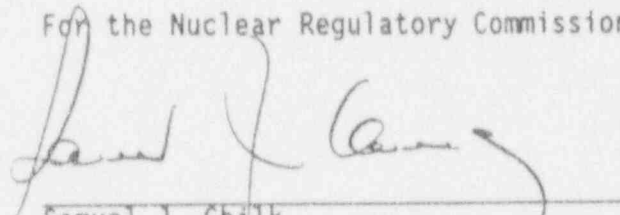
* * * * *

Licensee means, for the purpose of this part, the holder of a license issued pursuant to 10 CFR Parts 50, 70, or 72 or the holder of a certificate of compliance or approved compliance plan issued under 10 CFR Part 76.

* * * * *

Dated at Rockville, Maryland, this 4th day of February, 1994.

For the Nuclear Regulatory Commission.



Samuel J. Chilk,
Secretary of the Commission.

Appendix A to this document -

United States Enrichment Corporation Recommendations for
10 CFR Part 76; Standards and Certification Process for the
Paducah and Portsmouth Gaseous Diffusion Plants

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GENERAL PROVISIONS

76.1 Purpose

(a) The regulations of this part: establish the standards necessary to protect the public health and safety from radiological hazard and provide for the common defense and security applicable to the gaseous diffusion uranium enrichment plants (GDPs) owned by the Department of Energy (the Department) and leased to the United States Enrichment Corporation (the Corporation); establish procedures and criteria governing the process for the issuance of Certificates of Compliance (Certificates) for the GDPs to the Corporation with respect to such standards; and establish and provide for the terms and conditions upon which the Commission will issue Certificates, or other approvals with respect to the GDPs. The regulations in this part also apply to any person to which transfer of ownership of the Corporation is made pursuant to section 1502 of the Atomic Energy Act of 1954, as amended.

(b) The regulations contained in this part are issued pursuant to the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Title M of the Energy Policy Act of 1992 (106 Stat. 2952).

(c) In addition to the regulations in this part, the additional standards set forth in the following regulations are specifically applicable to the GDPs in accordance with their terms and are incorporated by reference herein:

- (i) 10 CFR Part 19 Notices, Instructions, and Reports to Workers; Inspections
- (ii) 10 CFR Part 20 Standards for Protection Against Radiation
- (iii) 10 CFR Part 21 Reporting of Defects and Noncompliance
- (iv) 10 CFR Part 51 Environmental Protection Regulation for Domestic Licensing and Related Regulatory Functions
- (vi) 10 CFR Part 71 Packaging and Transportation of Radioactive Material
- (vii) 10 CFR Part 170 Fees for Facilities and Materials Licenses and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended.

(d) In addition to the regulations in this part and those cited in 76.1(c), the additional standards set forth in the following regulations, with the noted amendments, are specifically applicable to the GDPs to the extent they are referenced within this part.

- (i) 10 CFR Part 30 Rules of General Applicability to Domestic

Licensing of Byproduct Material

10 CFR 30.41(b) is amended to include the following:

(8) To any person certified under 10 CFR 76.

(ii) 10 CFR Part 40 Domestic Licensing of Source Material

10 CFR 40.51(b) is amended to include the following:

(8) To any person certified under 10 CFR 76.

(iii) 10 CFR Part 73 Physical Protection of Plants and Materials

(iv) 10 CFR Part 74 Material Control and Accounting of Special Nuclear Material

For purposes of the requirements in this part, 10 CFR 74.33(c)(4)(i) is modified to read: "Performing, unless otherwise required to satisfy part 75 of this chapter, a dynamic (nonshutdown) physical inventory of in-process gaseous (e.g., in the enrichment equipment) uranium and U^{235} at least every 65 days, and performing a static physical inventory of all other uranium and total U^{235} contained in natural, depleted, and enriched uranium located outside of the enrichment processing equipment at least every 370 calendar days, with static physical inventories being conducted in conjunction with a dynamic physical inventory of in-process gaseous uranium and U^{235} so as to provide a total plant material balance at least every 370 calendar days; and"

10 CFR 74.33(c)(6)(ii) is modified to read: "Items are stored and handled, or subsequently measured, in a manner so that unauthorized removal of 500 grams or more of U^{235} , as individual items or as uranium contained in items, will be detected. Exempted from the requirements of paragraph (c)(6) (i) and (ii) of this section are licensed-identified items each containing less than 500 grams U^{235} up to a cumulative total of 50 kilograms of U^{235} and items that exist for less than 14 calendar days; and containers that are not man portable (e.g., weigh more than 500 pounds) and contain uranium in the form of UF_6 ."

76.2 Scope

Except as provided in §§ 76.11 to 76.13, inclusive, the regulations in this part apply to the operation of the GDPs and the ownership, acquisition, delivery, receipt, possession, use, processing, and transfer of byproduct material, source material, and SNM in connection with such operation of the GDPs.

76.3 Certification Requirements

No person subject to the regulations in this part shall operate the GDPs, except as authorized pursuant to a Certificate or other approval issued by the Commission pursuant to these regulations.

76.4 Definitions

Act means the Atomic Energy Act of 1954 (68 Stat 919), including any amendments thereto;

Agreement State, as designated in part 150 of this chapter means any State with which the Commission has entered into an effective agreement under subsection 274b of the Act.

Non-agreement State means any other State.

Alert means events may occur, are in progress; or have occurred that could lead to a release of radioactive material[s] but that the release is not expected to require a response by an offsite response organization to protect persons offsite.

Atomic weapon means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

Byproduct material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

Certificate of Compliance means a certificate issued by the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, pursuant to section 1701 of the Atomic Energy Act of 1954, as amended, containing a finding of compliance with standards provided in this part and authorizing all activities approved under this certificate.

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Common defense and security means the common defense and security of the United States.

Contiguous sites means corporation-controlled locations, deemed by the Commission to be close enough in proximity to each other that the SNM must be considered in the aggregate for the purpose of physical protection.

Decommission means to remove (as a facility) safely from service and reduce residual radioactivity in accordance with criteria in the lease agreement between the Department of Energy and the Corporation.

Department and Department of Energy means the Department of Energy Organization Act (i.e., Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq.), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, member, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub.L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

Effective dose equivalent means the sum of the products of the dose equivalent to the body organ or tissue and the weighting factors applicable to each of the body organs or tissues that are irradiated. Weighting factors are: 0.25 for gonads, 0.15 for breast, 0.12 for red bone marrow, 0.12 for lungs, 0.03 for thyroid, 0.03 for bone surface, and 0.06 for each of the other five organs receiving the highest dose equivalent.

Effective kilograms of SNM means (1) for plutonium and uranium-233 their weight in kilograms; (2) For uranium with an enrichment in the isotope U-235 of 0.01 (1%) and above, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and (3) For uranium with an enrichment in the isotope U-235 below 0.01(1%), by its element weight in kilograms multiplied by 0.0001.

Formula quantity means strategic SNM in any combination in a quantity of 5000 grams or more computed by the formula, $\text{grams} = (\text{grams contained U}^{235}) + 2.5 (\text{grams U}^{233} + \text{grams plutonium})$. This class of material is sometimes referred to as a Category I quantity of material.

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group,

Government agency other than the Commission or the Department, any State or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Produce, when used in relation to SNM, means (1) to manufacture, make, produce, or refine SNM; (2) to separate SNM from other substances in which such material may be contained; or (3) to make or to produce new SNM.

Restricted Data means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of SNM; or (3) the use of SNM in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

Site Area emergency means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

Source material means source material as defined in section 112. of the Act and in the regulations contained in part 40 of this chapter.

SNM means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the act, determines to be SNM but does not include source material; or (2) any material artificially enriched by any of the foregoing but does not include source material.

SNM of low strategic significance means (1) Less than an amount of SNM of moderate strategic significance, as defined in paragraph 1 of the definition of SNM of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U^{235} isotope) or 15 grams of U^{235} or 15 grams of plutonium or the combination or 15 grams when computed by the equation, grams = (grams containing U^{235}) + (grams plutonium) + (grams U^{233}) or (2) Less than 10,000 grams but more than 1000 grams of U^{235} (contained in uranium enriched above natural but less than 10 percent in the U^{235} isotope). 10,000 grams or more of U^{235} (contained in uranium enriched above natural, but less than 10 percent in the U^{235} isotope). This class of material is sometimes referred to as a Category rn quantity of material.

SNM of moderate strategic significance (MSS/SNM) means (1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of U^{235} (contained in uranium enriched to 20 percent or more in the U^{235} isotope) or more than 500 grams of U^{235} or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams contained U^{235}) + (grams U^{233} + grams plutonium); or (2) 10,000 grams or more of U^{235} (contained in uranium enriched to 10 percent or more, but less than

20 percent in the U²³⁵ isotope). This class of material is sometimes referred to as a Category II quantity of material.

SNM scrap means the various forms of SNM generated during chemical and mechanical processing, other than recycle material and normal process intermediates, which are unsuitable for use in their present form, but all or part of which will be used after further processing.

Strategic SNM means uranium-235 (contained in uranium enriched to 20 percent or more in U²³⁵ isotope), uranium-233, or plutonium.

Transient shipment means a shipment of nuclear material, originating and terminating in foreign countries, on a vessel or aircraft which stops at a United States port.

United States, when used in a geographical sense, means Puerto Rico and all territories and possessions of the United States.

United States Enrichment Corporation, Corporation, and USEC mean the corporation formed by section 1301 of the Atomic Energy Act of 1954, as amended, to operate the gaseous diffusion plants at Portsmouth, Ohio and Paducah, Kentucky.

Uranium enrichment facility means (1) Any facility used for separating the isotopes of uranium or enriching uranium in the U²³⁵ isotope, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

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 U²³⁵ isotope.

76.5 Communications

(a) Any communication or report concerning the regulations in this part and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) By delivery in person to the Commission's offices to the Director, Office of Nuclear Materials and Safeguards at:

(i) 2120 L Street NW., Washington, DC; or

(ii) 11555 Rockville Pike, One White Flint North, Rockville, MD.

76.6 Interpretations

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

76.7 Employee Protection

(a) Discrimination by the Corporation or a contractor or subcontractor of the Corporation against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violation of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any proceeding, or before Congress, or at any General or State proceeding regarding any provision (or proposed provision) or either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by the Corporation or a contractor or subcontractor of the Corporation may be grounds for:

- (1) Denial, revocation, or suspension of the Certificate of Compliance.
- (2) Imposition of a civil penalty on the Corporation.
- (3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by non-prohibited considerations.

(e)(1) The Corporation shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) The Corporation is expected to notify its contractors of the prohibition against discrimination for engaging in protected activities.

(3) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301-492-8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the Commission or to his or her employer on potential violations or the matters within the Commission's regulatory responsibilities.

76.9 Completeness and Accuracy of Information

(a) Information provided to the Commission by the Corporation or information required by statute or by the Commission's regulations, orders, or conditions of the certificate to be maintained by the Corporation shall be complete and accurate in all material respects.

(b) The Corporation shall notify the Commission of information identified by the Corporation as having, for the regulated activity, a significant implication for public health and safety or common defense and security. The Corporation violates this paragraph only if the Corporation fails to notify the Commission of information that the Corporation has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

76.10 Deliberate Misconduct

(a) The Corporation, or any employee of the Corporation; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of the Corporation, who knowingly provides to the Corporation, contractor, or subcontractor components, equipment, materials, or other goods or services, that relate to the Corporation's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate, issued by the Commission, or

(2) Deliberately submit to the Commission, the Corporation, or the Corporation's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Commission.

(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.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows;

(1) Would cause the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any certificate issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of the Corporation, its contractor, or subcontractor.

EXEMPTIONS

76.11 Persons Providing Services Under Certain Department and Corporation Contracts

(a) Any prime contractor of the Corporation is exempt from the requirements for a license set forth in sections 53, 62, 63, 64, 81, and 82 of the Act and from the requirement for a Certificate set forth in this part to the extent that such contractor, under his prime contract with the Corporation, operates the GDPs or receives title to, owns, acquires, delivers, receives, possesses, uses, or transfers byproduct material, source material, or SNM: (1) in connection with the operation of the GDPs on behalf of the Corporation; or (2) for the performance of other work for the Corporation with respect to the GDPs, including the transportation of byproduct material, source material, or SNM to or from a GDP site and the performance of contract services during temporary interruptions of such transportation.

(b) Any prime contractor or subcontractor of the Department is exempt from the requirements for a license set forth in sections 53, 62, 63, 64, 81, and 82 of the Act and from the regulations in this part to the extent that such prime contractor or subcontractor receives title to, owns, acquires, delivers, receives, possesses, uses, or transfers byproduct material, source material, or SNM at the GDPs under his prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

76.13 Department of Defense

The regulations in this part do not apply to the Department of Defense to the extent that the Department receives, possesses, and uses SNM from the GDPs in accordance with the direction of the President pursuant to Section 91 of the Act.

76.14 Specific Exemptions

(a) The Commission may, upon application by the Corporation or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

(b) The Department is exempt from the requirements of the regulations in this part in its capacity as owner/lessor of the GDPs.

CERTIFICATE OF COMPLIANCE

76.18 Type of Certification

An initial Certificate of Compliance will be issued to the United States Enrichment Corporation (USEC) upon approval of an application filed pursuant to the regulations in this part as described in 10 CFR 76.21 below. Annual renewals of the Certificate of Compliance will be issued according to the requirements in 10 CFR 76.33, Annual Renewals.

APPLICATION FOR INITIAL CERTIFICATE OF COMPLIANCE

76.21 Filing

(a)(1) The Corporation may apply for an initial Certificate of Compliance to operate the GDPs by filing 25 copies of the application in accordance with the instructions in 10 CFR 76.5.

(2) Information contained in previous applications, statements, or reports filed with the Commission may be incorporated by reference if the references are clear and specific.

(b) An application for a Certificate of Compliance filed pursuant to the regulations in this part will be in lieu of an application authorizing other activities for which a license would otherwise be required.

(c) Any application which contains Restricted Data shall be prepared in such manner that all Restricted Data are separated from the unclassified information.

(d) Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with the provisions of the regulations contained in part 2 of this chapter.

(e) The initial application for a Certificate shall be accompanied by the fee prescribed in § 170.31 of this chapter. No fee will be required to accompany an application for renewal or amendment of a Certificate, except as provided in § 170.31 of this chapter.

(f) In response to a written request by the Commission, the Corporation shall file with the Commission the installation information described in 10 CFR 75.11 of this chapter on Form N-71. The Corporation shall also permit verification of such installation information by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in 75.6 and 75.11 through 75.14 of this chapter.

76.22 Contents of Initial Application

(a) The application for an initial Certificate of Compliance shall contain the following information:

(1) The full name of the corporation, the State where it was incorporated or organized, the location of the principal office, the names, addresses, and citizenship of its principal officers, and shall include information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation or foreign government,

(2) The activity, purpose, location, and plan of operation.

(3) The technical qualifications including training and experience of the applicant and members of his staff to engage in the proposed activities.

(4) A description of equipment to protect health and safety and environment including handling devices, working areas, shields, measuring and monitoring instruments, devices for the disposal of radioactive effluents and wastes, storage facilities, criticality accident alarm systems, etc.

(5) Proposed procedures to protect health and minimize danger to life or property (such as procedures to avoid accidental criticality, procedures for personnel monitoring and waste disposal, post criticality accident emergency procedures, etc.).

(b) The application for a Certificate of Compliance must contain a full description of the Corporation's program for control and accounting of such SNM or enrichment equipment that will be in the Corporation's possession under the certificate to show how compliance with the requirements of 74.33 (Nuclear Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce SNM of Low Strategic Significance), of this chapter will be accomplished.

(c) The Commission may at any time after the filing of the original application, and before the expiration of the certificate, require further statements in order to enable the Commission to determine whether the certificate should be granted or denied or whether a

certificate should be modified or revoked. All applications and statements shall be signed by a corporate officer of the Corporation.

(d) The application and statement shall contain complete and accurate disclosure as to all matters and things required to be disclosed.

(e) In addition to the other information required by this section, the application for a certificate of compliance shall contain mechanistic accidents and events and shall be a revision of the type of analysis in the final safety analysis reports (FSARs) prepared in 1985 that were relied on by the Department. These FSARs contain analyses of anticipated occurrences and accidents with a focus on mechanistic accidents and events. The FSAR analyses also address external events and natural phenomena. The FSAR shall be revised, as necessary, to include changes made in the facility or procedures as described in the FSAR since its preparation. The FSAR shall be current a maximum of 6 months prior to the date of filing the revisions Proposed operating limits based on the analyses in the FSARs shall also be submitted in the application in the form of revised operational safety limits. The application shall also contain a description of the quality assurance program to be applied to the safety related functions of plant operation.

(f)(1) The application for a Certificate of Compliance that would authorize the transport or delivery to a carrier for transport of SNM of moderate or low strategic significance (per 73.1(b) (2) of this chapter) must include (i) a description of the plan for physical protection of SNM in transit in accordance with 73.67(a), and (g) for 10 kg or more of SNM of low strategic significance, as appropriate, a plan for the selection, qualification, and training of armed escorts or the specification and design of a specially designed truck or trailer, and (ii) the Corporation's safeguards contingency plan or response procedures, as appropriate, for dealing with threats, thefts, and radiological sabotage relating to the SNM in transit.

(2) The Corporation shall retain the description of the plan for physical protection of the SNM in transit and the safeguards contingency plan or safeguards response procedures and each change to the plan or procedures as a record for a period of three years following the date on which the Corporation last possessed the appropriate type and quantity of SNM requiring this record under each certificate.

(g)(1) The application for a Certificate of Compliance must contain an emergency plan for responding to the radiological hazards of an accidental release of SNM and to any associated chemical hazards directly related to the release of the SNM.

(2) Emergency plans submitted under paragraph (g)(1) of this section must include the following information:

(i) Facility descriptions

(ii) Types of accidents considered. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of the Corporation's staff, should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Commission; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to, and a brief description of, the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility and some equipment will not prevent the notification and coordination. The Corporation shall also commit to notify the Commission operations center immediately after notification of the appropriate offsite response organizations and not later than one hour after the Corporation declares an emergency.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the Commission.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the Corporation will provide workers on how to respond to an emergency including any special instructions and orientation tours the Corporation would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(xi) Safe condition. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The Corporation shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The Corporation shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(xiii) Hazardous chemicals. A certification that the Corporation has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, if applicable to the Corporation's activities at the proposed place of use of the SNM.

(h) The application for a Certificate of Compliance must include a fixed site physical security plan that demonstrates how the Corporation plans to meet the requirements of 73.67(f) and (g) as appropriate, of this chapter. The Corporation shall retain a copy of this physical security plan as a record for the period during

which the certificant possesses the appropriate type and quantity of SNM requiring this record under the certificate and each change to the plan for three years after the change.

(i) The application for a Certificate of Compliance must include sufficient information pursuant to 51.41, to enable the Commission to prepare an environmental assessment in accordance with 51.30.

76.23 Requirements for the Approval of Initial Application

(a) An application for an initial Certificate of Compliance will be approved if the Commission determines that:

(1) The Corporation and its staff is qualified by reason of training or experience to operate the GDPs in accordance with the regulations in this chapter,

(2) The Corporation's proposed equipment and facilities are adequate to protect health and minimize danger to life or property.

(3) The Corporation's proposed procedures to protect health and to minimize danger to life or property are adequate,

(4) Where the Corporation is required to submit a summary description of the fundamental material controls provided in his procedures for the control and accounting for SNM pursuant to 76.22(b), the Corporation's proposed controls are adequate,

(5) Where the Corporation is required to submit a physical security plan (for protection of SNM in transit) pursuant to 76.22(f) of this chapter, the Corporation's proposed plan is adequate,

(6) Where the Corporation is required to submit a physical security plan (for protection of SNM at a fixed site) pursuant to 76.22(h), the Corporation's proposed plan is adequate,

(7) The Corporation's proposed emergency plans are adequate.

76.24 Criticality Accident Requirements

(a) The application must include provisions to maintain, in each area in which over 700 grams of contained U^{235} is handled, used, or stored, a monitoring system meeting the requirements of either paragraph (a)(1) or (a)(2), as appropriate, and using gamma or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs. This section is not intended to require monitoring systems when SNM is being transported when packaged in accordance with the requirements of part 71 of this chapter.

(1) The monitoring system shall be capable of detecting a criticality that produces an absorbed dose in soft tissue of 20 rads of combined neutron and gamma radiation at an unshielded distance of 2 meters from the reacting material within one minute. Coverage of all areas shall be provided by two detectors, or

(2) Facilities in operation prior to December 6, 1974, in accordance with provisions of the Act (and operated for the Department), may maintain a monitoring system capable of detecting a criticality which generates radiation levels of 300 rems per hour one foot from the source of the radiation. The monitoring devices in the system shall have a preset alarm point of not less than 5 millirems per hour (in order to avoid false alarms) nor more than 20 millirems per hour. In no event may any such device be farther than 120 feet from the SNM being handled, used, or stored; lesser distances may be necessary to meet the requirements of this paragraph (a)(2) on account of intervening shielding or other pertinent factors.

(3) The Corporation shall maintain emergency procedures for each area in which this SNM is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm. These procedures must include designation of responsible individual, the conduct of drills to familiarize personnel with the evacuation plan, and placement of radiation survey instruments in accessible locations for use in such an emergency. The Corporation shall retain a copy of current procedures for each area as a record for as long as SNM is handled, used, or stored in the area. The Corporation shall retain any superseded portion of the procedures for three years after the portion is superseded.

(b) The Corporation shall:

(1) Provide the means for identifying quickly which individuals have received doses of 10 rads or more,

(2) Maintain facilities and supplies at the site for decontamination of personnel, arrangements for the services of a physician and other medical personnel qualified to handle radiation emergencies, arrangements for transportation of injured or contaminated individuals to treatment facilities, and arrangements for treatment of individuals at treatment facilities outside the site boundary.

(c) Upon a showing by the Corporation that good cause exists for an exemption in whole or in part from the requirements of this section the Corporation may apply to the Commission for such exemption. Such application shall specify his reason for the relief requested.

76.25 Decontamination and Decommissioning

Decontamination and decommissioning of the GDPs shall be the responsibility of the Department in accordance with Sections 1801-1803 of the Atomic Energy Act, as amended. Funding for such activities shall be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established in the Treasury of the United States pursuant to the provisions of such Act and pursuant to separate arrangements between the Department and the Corporation.

CERTIFICATES OF COMPLIANCE

76.31 Issuance of an Initial Certificate of Compliance

(a) Upon a determination by the Commission, in consultation with the Environmental Protection Agency, that an application submitted by the Corporation for a Certificate for the GDPs substantially meets the standards contained in this part, the Commission will issue a Certificate of Compliance for the GDPs with such conditions and limitations as the Commission deems necessary to effectuate the purposes of the Act.

(b) This Certificate shall [subject to the provision of § 76.41(b)] be deemed to authorize the Corporation to operate the GDPs and to receive title to, own, acquire, receive, possess, use, process, and transfer source, and SNM in connection with such operation.

(c) No Certificate will be issued by the Commission if the Commission finds that the issuance of such Certificate would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(d) The Commission will provide notice of each such application pursuant to 10 CFR § 2.804(a) and afford interested persons an opportunity to submit written comments on the application pursuant to 10 CFR § 2.805(a). Should the Commission determine that hearings on the application are necessary, such hearings shall be conducted in accordance with 10 CFR § 2.805(b).

76.32 Conditions of Initial Certificate

(a) The Certificate of Compliance shall contain and be subject to the following conditions:

(1) No right to the source material, byproduct material, or SNM used or produced shall be conferred by the Corporation except as defined by the certificate,

(2) Neither the certificate nor any right under the certificate shall be assigned or otherwise transferred in violation of the provisions of the Act,

(3) All SNM shall be subject to the right of recapture reserved by section 108 of the Act and to all other applicable provisions of the Act.

(4) No source material, byproduct material, or SNM may be used in any utilization or production facility except in accordance with the provisions of the Act.

(5) The Corporation shall not use the source material, byproduct material, or SNM to construct an atomic weapon or any component of an atomic weapon.

(6) The certificate shall be subject to, and the Corporation shall observe, the applicable rules, regulations and orders of the Commission referenced within this section.

(b) The Commission may incorporate in any certificate such additional conditions and requirements with respect to the Corporation's ownership, receipt, possession, use, and transfer of source material, byproduct material, or SNM in connection with the operation of the GDPs as it deems appropriate or necessary in order to;

(1) Promote the common defense and security,

(2) Protect health or to minimize danger to life or property,

(3) Guard against the loss or diversion of SNM,

(4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the certificate as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder.

(c)(1) The Certificate of Compliance shall contain and be subject to a condition requiring the Corporation to maintain and follow;

(i) The program for control and accounting of uranium source material at a uranium enrichment facility or SNM and fundamental nuclear material controls implemented pursuant to 76.22(b), or 74.33(b), of this chapter, as appropriate,

(ii) The measurement control program for uranium source material at a uranium enrichment facility or SNM control and accounting implemented pursuant to 74.33(b) of this chapter, and

(iii) Such other material control procedures as the Commission determines to be essential for the safeguarding of uranium source materials at a uranium enrichment facility or of SNM and providing that the Corporation shall make no change that would decrease

the effectiveness of the material control and accounting program implemented pursuant to 76.22(b), or 74.33(b), of this chapter and the measurement control program implemented pursuant to 74.33(b), of this chapter without the prior approval of the Commission. A certificant desiring to make such changes shall submit an application for amendment to its certificate pursuant to 76.34.

(2) The Corporation shall maintain records of changes to the material control and accounting program made without prior Commission approval for a period of 5 years from the date of the change. The Corporation shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report containing a description of each within six months of the change.

(d) The Corporation shall make no change which would decrease the effectiveness of the plan for physical protection of SNM in transit prepared pursuant to 76.22(f) of this chapter without the prior approval of the Commission

(i) Should the Corporation desire to make such a change it shall submit an application for an amendment to the certificate pursuant to 76.34 of this chapter.

(ii) The Corporation may make changes to the plan for physical protection of SNM without prior Commission approval if these changes do not decrease the effectiveness of the plan.

(iii) A report containing a description of each change must be furnished to the Director of Nuclear Material Safety and Safeguards, U.S. NRC, Washington, DC 20555, with a copy to the appropriate NRC Regional Office within two months after the change.

(e) The Corporation shall make no change which would decrease the effectiveness of a fixed site security plan prepared pursuant to 76.22(h) without the prior approval of the Commission.

(i) Should the Corporation desire to make such a change, it shall submit an application for an amendment to its certificate pursuant to 76.34,

(ii) The Corporation shall maintain records of changes to the plan made without prior Commission approval, for three years from the effective date of the change,

(iii) A report containing a description of each change must be furnished the Director of Nuclear

Material Safety and Safeguards, U.S. NRC, Washington, DC 20555, with a copy to the appropriate NRC Regional office within two months after the change.

(f) The Corporation shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of its safeguard contingency plan. The Corporation shall retain a copy of the safeguards contingency plan procedures as a record for the period during which the Corporation possesses the appropriate type and quantity of SNM requiring this record under the certificate for which the procedures were developed and each change to the plan for three years from the effective date of the change. The Corporation shall make no change that would decrease the safeguards effectiveness of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in the Corporation's safeguards contingency plan prepared pursuant to 76.22(f) of this chapter without the prior approval of the Commission. Should the Corporation desire to make such a change it shall submit an application for amendment to its certificate pursuant to 76.34. The Corporation may make changes to its safeguards contingency plan without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan.

(g) The Corporation shall follow the emergency plan submitted in accordance with 76.22(g) as approved by the Commission. The Corporation may change the approved plan, without Commission approval, if the changes do not decrease the effectiveness of the plan. Proposed changes that decrease the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Commission. The Corporation shall furnish the Director of NMSS and the appropriate NRC Regional Office and the affected offsite response organizations, a copy of each change within 60 days after the change is made.

76.33 Annual Renewals

(a) After issuance by the Commission of the initial Certificate, the Corporation shall file an annual application for renewal. Such annual applications shall be filed in accordance with § 76.21. The first renewal application shall be filed at least 30 days prior to the end of the calendar year following the year of issuance of the initial certificate. Thereafter, renewal applications shall be filed no later than 30 days prior to the end of each subsequent calendar year. Renewal applications shall contain revisions to the FSAR on a replacement page basis and a list that identifies current pages of the FSAR following page replacement. This submittal shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision. Information contained in previous applications, statements, or reports filed with the Commission may

be incorporated by reference; provided that such references are dear and specific.

(b) In any case in which the Corporation has obtained a Certificate and has filed an application for renewal in accordance with subsection (a), the Corporation's existing Certificate shall not expire until the Corporation's most recent application has been evaluated and a final determination made by the Commission.

(c) An application for renewal shall be subject to §§ 76.22(c) and (d) and 76.31(d) and shall contain the following information:

(1) an identification of any significant changes since the prior application to the information required for the initial application by § 76.22(a);

(2) a revision of the FSAR, on a replacement page basis, reflecting, as necessary, changes in the facility or procedures since its last revision in accordance with § 76.22(e); and

(3) a revision of the description of its QA program to be applied to the safety related functions of plant operation, on a replacement page basis, in accordance with § 76.22(e).

76.34 Amendment of Certificates

(a) Applications for amendment of a Certificate of Compliance shall be filed in accordance with 76.21(a) and shall specify the respects in which the Corporation desires the certificate to be amended and the grounds for such amendment.

(b) The Corporation shall make no change to the Paducah or Portsmouth GDPs or procedures as described in the application, nor conduct tests or experiments not described in the application, without prior Commission approval unless such changes, tests or experiments do not reduce the safety or safeguards effectiveness of the facility.

(c) The safety effectiveness of the facility shall be deemed to be reduced if: (a) the probability of occurrence or the consequences of an accident or malfunction of safety-related equipment previously evaluated in the application may be increased, (b) a possibility for an accident or malfunction of a different type than any evaluated previously in the application may be created, or (c) the margin of safety in any operating limit is reduced.

(d) The safeguards effectiveness of the facility shall be deemed to be reduced if: (a) the probability of unauthorized increased enrichment is increased, or (b) the probability of theft or diversion of SNM is increased.

(e) The Corporation shall maintain records of changes that are made to the facility without prior approval for a period of five years

from the date of the change and shall furnish the Director, Office of Nuclear Material Safety and Safeguards, with a report summarizing each change every two years. Subsequent revisions shall reflect all changes up to a maximum of one year prior to the date of filing.

76.35 Commission Action on Applications to Renew or Amend

(a) In considering an application by the Corporation to renew the Certificate of Compliance, the Commission will apply the criteria set forth in 76.23(a)(1)--(3).

(b) In considering an application by the Corporation to amend the Certificate of Compliance, the Commission will apply the criteria set forth in 76.23 as applicable.

76.36 Inalienability of Certificates

The certificate granted under the regulations in this part, and no right to possess or utilize SNM granted by any certificate issued pursuant to the regulations in this part, shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any certificate to any person unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

76.37 Disclaimer of Warranties

Neither the Government nor the Commission makes any warranty or other representation that SNM (a) will not result in injury or damage when used for purposes approved by the Commission, (b) will accomplish the results for which it is requested and approved by the Commission, or (c) is safe for any other use.

76.38 Expiration and Termination of Certificates

(a) Except as provided in § 76.33(b), each Certificate or approval issued pursuant to this part expires at the end of the day, in the month and year stated in the Certificate or approval.

(b) The Corporation shall notify the Commission promptly, in writing under § 76.5 when the Corporation decides to terminate operation at either of the GDPs and other activities authorized under the Certificate. No later than the date specified for termination of operation in the Corporation's notice, the Corporation shall terminate operation of the GDPs and make appropriate arrangements with the Department to return the GDPs to the Department.

(c) If the Corporation does not submit an annual renewal application under § 76.33, the Corporation shall on or before the expiration date specified in the existing Certificate:

(1) Terminate operation of the GDPs and

(2) Make appropriate arrangements with the Department to return the GDPs to the Department.

76.39 Submission, Review, and Approval of Department Compliance Plans

(a) The Corporation may submit, in accordance with 76.21, a plan prepared by the Department for achieving compliance with the standards set forth in this part in conjunction with its initial application for a Certificate of Compliance or any renewal application or at any other time. Such plan shall contain such information as the Corporation deems necessary to enable the Commission to make the finding required by § 1701(d) of the Act.

(b) The Commission shall approve the plan, with such conditions and limitations as it deems necessary to effectuate the purposes of the Act, so long as it finds that the plan provides reasonable assurance that the GDPs will meet the standards in this part in a timely manner and that the GDPs can and will be operated in a manner that adequately protects public health and safety and provides for the common defense and security until such time as full compliance is achieved.

(c) Notice and comment on the plan will be provided in accordance with 76.31(d).

ACQUISITION, USE AND TRANSFER OF RADIOACTIVE MATERIAL, CREDITORS' RIGHTS

76.41 Authorized Use of Radioactive Material

(a) The Corporation shall confine its possession and use of byproduct material, source material, and SNM to the locations and purposes authorized in his certificate. Except as otherwise provided in the certificate, the certificate issued pursuant to the regulations in this part shall carry with it the right to receive title to, own, acquire, receive, possess and use byproduct material, source material, and SNM. Preparation for shipment and transport of such material shall be in accordance with the provisions of part 71 of this chapter.

(b) The possession, use and transfer of any byproduct material, source material, and SNM produced by the Corporation, in connection with or as a result of use of such materials received under this Certificate, shall be subject to the provisions of the Certificate and the regulations in this part.

76.42 Transfer of Radioactive Material

(a) The Corporation shall not transfer byproduct material, source material, or SNM except as authorized pursuant to this section.

(b) Except as otherwise provided in the certificate and subject to the provisions of paragraphs (c) and (d) of this section, the

Corporation may transfer byproduct material, source material, and SNM:

- (1) To the Department;
- (2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission or the Atomic Energy Commission under section 274 of the Act, if authorized by such agreement;
- (3) To any person exempt from the licensing requirements of the Act and regulations in parts 30, 40, and 70, to the extent permitted under such exemption;
- (4) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;
- (5) To any person authorized to receive such byproduct material, source material, or SNM under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;
- (6) To any person abroad pursuant to an export license issued under part 110 of this chapter; or
- (7) As otherwise authorized by the Commission in writing.

(c) Before transferring byproduct material, source material, or SNM to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the byproduct material, source material, or SNM the Corporation shall verify that the transferee's license authorized receipt of the type, form, and quantity of source or SNM to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

- (1) The Corporation may have in its possession, and read, a current copy of the transferee's specific license or registration certificate, the Corporation shall retain a copy of each license or certificate for three years from the date that it was obtained.
- (2) The Corporation may have in its possession a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material, source material, or SNM to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date. The Corporation shall retain the written

certification as a record for three years from the date of receipt of the certification;

(3) For emergency shipments the Corporation may accept oral certification by the transferee that he or she is authorized by license or registration certification to receive the type, form, and quantity of byproduct material, source material, or SNM to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days. The Corporation shall retain the written confirmation of the oral certification for three years from the date of receipt of the confirmation;

(4) The Corporation may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations. The Corporation shall retain the compilation of information as a record for three years from the date that it was obtained; or

(5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when the Corporation desires to verify that information received by one of these methods is correct or up-to-date, the Corporation may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the material. The Corporation shall retain the record of confirmation for three years from the date the record is made.

76.44 Creditor Regulations

(a) The Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien upon the Corporation's interest in the GDPs or any byproduct material, source material, or SNM not owned by the United States, used in connection with the operation of the GDPs. Providing:

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the Corporation pursuant to the provisions of the Certificate of Compliance issued by the Commission pursuant to this Par(, and

(2) That no creditor so secured may take possession of the Corporation's interest pursuant to the provisions of this section without the prior approval of the Commission.

(b) Nothing contained in this section shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(c) As used in this section, creditor includes, without implied limitation, the trustee under any mortgage, pledge, or lien on the Corporation's interest made to secure any creditor, any trustee, or receiver appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, interest pledge, or lien, any purchaser of such at the sale thereof upon foreclosure of such mortgage, pledge, or lien or upon exercise of any power of sale contained therein, or any assignee of any such purchaser.

RECORDS, REPORTS AND INSPECTIONS

76.50 Reporting Requirements

(a) Immediate report. The Corporation shall notify the Commission as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) Twenty-four hour report. The Corporation shall notify the Commission within 24 hours after the discovery of any of the following events involving byproduct material, source material, or SNM.

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area,

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 20.1001-20.2401 of 10 CFR 20 for the material, and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when;

(i) The equipment is required by regulation or certificate condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory

limits, or to mitigate the consequences of an accident,

(ii) The equipment is required to be available and operable when it is disabled or fails to function, and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any byproduct material, source material, or SNM or any device, container, or equipment containing such material when;

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of 20.1001-20.2401 of 10 CFR 20 for the material, and

(ii) The damage affects the integrity of the material or its container.

(c) Preparation and submission of reports. Reports made by the Corporation in response to the requirements of this section must be made as follows:

(1) The Corporation shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center (Commercial telephone 301-951-0550). To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number,

(ii) A description of the event, including date and time,

(iii) The exact location of the event,

(iv) The isotopes, quantities, and chemical and physical form of the byproduct material, source material, or SNM involved, and

(v) Any personnel radiation exposure data available.

(2) Written report. For each report required by paragraph (a) or (b) of this section the Corporation shall submit a

written follow up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate Commission regional office. The reports must include the following:

- (i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned,
- (ii) The exact location of the event,
- (iii) The isotopes, quantities and chemical and physical form of the material involved,
- (iv) Date and time of the event,
- (v) Corrective actions taken or planned and the results of any evaluations or assessments, and
- (vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of the individuals by name.

76.51 Material Balance, Inventory, and Records Requirements

(a) As used in this section:

- (1) Additions to material in process means receipts that are opened except for receipts opened only for sampling and subsequently maintained under tamper-safing, and opened sealed sources.
- (2) Enrichment category for uranium-235 means high-enriched uranium—that uranium whose isotope content is 20 percent or more uranium-235 by weight, and low-enriched uranium—that uranium whose isotope content is less than 20 percent uranium-235 by weight.
- (3) Element means uranium.
- (4) Fissile isotope means (i) uranium-233 or (ii) uranium-235 by enrichment category.
- (5) Inventory difference (ID) means the quantity obtained by subtracting ending inventory (EI) and removals (R) from beginning inventory (BI) and additions to the inventory (A). Mathematically, item means any discrete quantity or container of SNM or source material, not undergoing

processing, having an unique identity and also having an assigned element and isotope quantity.

ID=BI+A-EI-R

ID is sometimes also referred to as "material unaccounted for" (MUF) in this chapter.

(6) Limit of error means the uncertainty component used in constructing a 95 percent confidence interval associated with a quantity after any recognized bias has been eliminated or its effect accounted for.

(7) Material balance means the determination of an ID.

(8) Material in process means any special nuclear material possessed by the licensee except in unopened receipts, sealed sources, and ultimate product maintained under tamper-safing.

(9) Physical inventory means determination on a measured basis of the quantity of SNM on hand at a given time. The methods of physical inventory and associated measurements will vary depending on the material to be inventoried and the process involved.¹

(10) Removals from material in process includes measured quantities of SNM disposed of as discards, encapsulated as a sealed source, or in other ultimate product placed under tamper-safing or shipped offsite.

(11) Tamper-safing means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of SNM within the container or vault.

(12) Ultimate product means any SNM in the form of a product that would not be further processed at the GDPs.

(13) Unopened receipts means receipts not opened by the licensee, including receipts of sealed sources, and receipts opened only for sampling and subsequently maintained under tamper-safing.

(b) The Corporation is subject to the record-keeping requirements of 74.33 of this chapter.

(c) The Corporation shall establish, maintain and follow written material control and accounting procedures that are sufficient to enable it to account for the SNM in the Corporation's possession under certification. The Corporation shall retain these procedures until the certificate is terminated and retain any superseded portion of the procedures for three years after the portion is superseded.

(d)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The Corporation shall maintain adequate safeguards against tampering with and loss of record.

(2) If there is a conflict between the Commission's regulations in this part, certificate condition, or other written commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for such records shall apply unless the Commission, pursuant to 70.14, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

76.52 Reports of Accidental Criticality or Loss or Theft or Attempted Theft of Special Nuclear Material

(a) The Corporation shall notify the NRC Operations Center (commercial telephone number (301) 951-0550) within one hour after discovery of any case of accidental criticality or any loss, other than normal operating loss, of SNM.

(b) The Corporation shall notify the NRC Operations Center within one hour after discovery of any loss or theft or unlawful diversion of SNM which the Corporation is authorized to possess or any incident in which an attempt has been made or is believed to have been made to commit theft or unlawful diversion of such material;

(c) This notification must be made to the Commission Operations Center via the Emergency Notification System if the Corporation is a party to that system. If the Emergency Notification System is unavailable, the Corporation shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the Commission Operations Center within one hour. The exemption of 73.21(g)(3) applies to all telephonic reports required by this section.

(d) Reports required under 73.71 need not be duplicated under the requirements of this section.

76.53 Material Status Reports

(a)(1) The Corporation shall complete and submit material balance reports as required by 74.13 (a)(1) of this chapter.

(2) If required to submit routine material status reports pursuant to 75.35 of this chapter the Corporation shall follow the requirements set out in 74.13(a)(2) of this chapter.

(b) If subject to the requirements of 70.51(e) the Corporation shall follow the requirements set out in 74.13(b) and 74.17(b) of this chapter.

76.54 Nuclear Material Transfer Reports

(a) When transferring or receiving SNM the Corporation shall follow the requirements set out in 74.15(a) and (b) of this chapter.

(b) If required to submit inventory change reports on DOE/Commission Form-741 pursuant to 75.34 of this chapter the Corporation shall follow the requirements set out in 74.15(c) of this chapter.

76.55 Inspections

(a) The Corporation shall afford to the Commission at all reasonable times opportunity to inspect byproduct material, source material, or SNM and the premises and facilities wherein such material is used, produced, or stored.

(b) The Corporation shall make available to the Commission for inspection, upon reasonable notice, records kept by the Corporation pertaining to its receipt, possession, use, acquisition, import, export, or transfer of byproduct material, source material, and SNM.

(c)(1) The Corporation shall, upon request by the Director, Office of Nuclear Material Safety and Safeguards or the appropriate Commission Regional Administrator, provide rent-free office space for the exclusive use of Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by the Corporation. The office shall be convenient to and have full access to the facility and, shall provide the inspector both visual and acoustic privacy.

(2) For each site, the space provided shall be adequate to accommodate a full-time secretary and transient Commission personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other onsite space is suggested as a guide. The office space that is provided shall be subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards or the appropriate Commission Regional Administrator. All furniture, supplies and communication equipment will be furnished by the Commission.

(3) The Corporation shall afford any Commission resident inspector assigned to that site or other Commission inspectors identified by the Director, Office of Nuclear Material Safety and Safeguards, as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

76.56 Tests

The Corporation shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this art, including tests of (a) byproduct material, (b) source material, (c) SNM, (d) facilities wherein such material is utilized, produced or stored, (e) radiation detection and monitoring instruments, and (f) other equipment and devices used in connection with the production, utilization, or storage of byproduct material, source material, and SNM.

76.59 Effluent Monitoring Reporting Requirements

(a) The Corporation shall:

(1) Submit a report to the appropriate Commission Regional Office, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 60 days after January 1 and July 1 of each year specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents during the previous six months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. On the basis of such reports and any additional information the Commission may obtain from the Corporation or others, the Commission may from time to time require the Corporation to take such action as the Commission deems appropriate.

MODIFICATION AND REVOCATION OF CERTIFICATE

76.61 Modification and Revocation of Certificate

(a) The terms and conditions of the certificate shall be subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, or by reason of rules, regulations or orders issued in accordance with the Act or any amendments thereto;

(b) Any Certificate may be revoked, suspended or modified for any material false statements in the application or any statement of

fact required under this part or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a certificate on an original application, or for failure to operate a GDP in accordance with the terms of the certificate, the application, or for violation of, or failure to observe any of the terms and condition of the Act, or of any applicable regulation of the Commission.

(c) Upon revocation, suspension or modification of a certificate, the Commission may immediately advise the Department to retake possession of all byproduct material, source material, and SNM held by the Corporation. In cases found by the Commission to be of extreme importance to the national defense or security, or to the health and safety of the public, the Commission may recapture any SNM held by the Corporation prior to any of the procedures provided under section 551-558 of title 5 of the United States Code.

(d) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no certificate shall be modified, suspended or revoked unless, facts or conduct which may warrant such action shall have been called to the attention of the Corporation in writing and the Corporation shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

76.62 Suspension in War or National Emergency

Whenever Congress declares that a state of war or national emergency exists, the Commission, if it finds it necessary to the common defense and security may,

(a) Suspend any certificate it has issued.

(b) Order the recapture of SNM.

(c) Order entry into any plant or facility in order to recapture SNM. Just compensation shall be paid for any damages caused by recapture of SNM pursuant to this section.

76.71 Violations

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title U of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of the applicable section of the Act or the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any Certificate issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon

conviction, may be punished by fine or imprisonment or both, as provided by law.

76.72 Criminal Penalties

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 76 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 76 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 76.1, 2, 3, 4, 5, 6, 11, 12, 13, 14, 18, 23, 25, 31, 33, 34, 35, 37, 39, 61, 62, 71, 72, and 73.

76.73 Backfitting

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the procedures or organization required to design, construct, or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the initial Certificate of Compliance in accordance with 10 CFR 76 for the Paducah or Portsmouth Gaseous Diffusion Plant.

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

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for the facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriate documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a certificate or the rules or orders of

the Commission, or into conformance with written commitments by the Corporation; or

(ii) That regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action

(7) If there are two or more ways to achieve compliance with a certificate or the rules or orders of the Commission, or with written commitments by the Corporation, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the Corporation is free to choose the way which best suits its purpose. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the Corporation in order to complete the backfit;

- (3) Potential change in the risk to the public from the accidental off-site release of radioactive material;
- (4) Potential impact on radiological exposure of facility employees;
- (5) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;
- (6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;
- (7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;
- (8) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;
- (9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No certification action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.