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April 12, 1994

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTN: Docketing and Service Branch

Dear Secretary Chilk:

Enclosed are the Department of Energy's comments on the Proposed 10CFR76, Regulation of Gaseous Diffusion Enrichment Plants. We have provided general comments on the Supplementary Information in addition to proposed text changes in the rule. Text changes are provided by section including the current text, proposed text, and the justification for the proposed change.

If you have any questions regarding these comments, please contact Dr. Norton Haberman, Acting Director, Office of Uranium Programs, at 301-903-4321.

Sincerely,

Daniel A. Dreyfus
Acting Director
Office of Nuclear Energy

Enclosure

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General Comments

Supplementary Information:

Location of Portsmouth Gaseous Diffusion Plant:

All references to the Portsmouth Plant in Portsmouth, Ohio, should be corrected to read: the Portsmouth Plant in Piketon, Ohio.

Lease Agreement:

All references to the Corporation's operation of the gaseous diffusion plants should be specific to those portions that are leased, per the Lease Agreement between the Department of Energy and the United States Enrichment Corporation.

Text in the Supplementary Information and the proposed rule referring to "the life of the plant" should be corrected to read "for the duration of the lease." The Corporation is leasing the plants from the Department.

Backfitting, § 76.76:

The Department of Energy (the Department) agrees with Commissioner Rogers' expectation that as 10 CFR 76 is applied, the need for plant changes will be identified. Subpart C, Section 76.76, as written, provides for required changes pursuant to § 76.6(a)(4) and § 76.6(a)(5). Furthermore, § 76.6(a)(3) provides for the imposition of additional requirements pursuant to the preparation of a regulatory analysis which will provide the cost/benefit basis for the change. The Department will continue to give the NRC staff the full benefit of its experience in the oversight of gaseous diffusion plant operation during the past 40 years, as agreed in the *Joint Statement of Understanding Between the Nuclear Regulatory Commission and the Department of Energy on Implementing Energy Policy Act Provisions on Regulation of Gaseous Diffusion Plants* (59 FR 4729). The Department sees no need to either delay the effectiveness of § 76.76 or change the backfit standards in § 76.76 from those in 10 CFR 50.109.

Initial Compliance Plan, § 76.62:

Several places in the document, the NRC refers to the plan for compliance indicating that it is part of the application filed by the Corporation and that the Corporation would address inadequacies in the compliance plan. Per the Energy Policy Act of 1992 (EPAct), the Department is responsible for preparing and submitting the compliance plan and not the Corporation. The Department has agreed to pay for certain items necessary to bring the plants into compliance, and,

as such, has not authorized the Corporation to make any commitments for compliance to the NRC on the Department's behalf.

Supplementary Information: Technical Safety Requirements, § 76.35:

The following comments are provided with regard to NRC's request for comment on interpretation of the Energy Policy of 1992 (the Act), and the subsequent deletions of § 76.35(k) and (l):

The discussion NRC is making regarding whether is should include Sections 76.35 (k) and (l) appears to be based upon an erroneous interpretation of the Energy Policy Act of 1992 that USEC generated waste and depleted uranium would be subject to the DOE Uranium Enrichment Decontamination and Decommissioning Fund (the Fund). Specifically in error is the following statement contained on page 6794:

> "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."

Based upon the Act, and the Lease Agreement between the Department and the Corporation, dated as of July 1, 1993 (Lease), it is the Department's position that all waste and depleted uranium generated by USEC as a result of its production activities are the responsibility of the Corporation; therefore, the Fund cannot be used for these purposes. Section 1403 (d) of the Atomic Energy Act of 1954, as amended, clearly states the Department's responsibility for payment of any costs of decontamination and decommissioning is for conditions existing before the transition date of July 1, 1993. Consistent with this mandate that the Department is responsible only for decontamination and decommissioning of preexisting conditions, the Lease requires that if the removal of any capital improvement made by the Corporation results in the increase of decontamination and decommissioning costs to the leased premises, the Corporation is obligated to pay for the increase in decontamination and decommissioning costs.

Section 4.4, *Turnover Requirements*, of the Lease specifically states that at the end of the Lease term, the Corporation is responsible "for removing all waste generated by the Corporation in such facility (including any material that is subject to classification as a hazardous waste under the Solid Waste Disposal Act, as amended), and which is subject to and authorized by Laws and Regulations for offsite disposal. The Corporation will remain responsible for the ultimate treatment and disposal of any waste generated by the Corporation, and for which the Department is not responsible, except as may be otherwise provided in this Lease."

Further, Article V, *Allocation of Liabilities*, (c)(iv), specifically provides that the Department will indemnify the Corporation for certain costs and expenses related to "the release, discharge, removal, disposal, change out, or replacement of polychlorinated biphenyls, transuranics, chromates, trichloroethylene, asbestos, or pentachlorophenol unless the substances have been introduced to the leased premises by the Corporation." Similarly, in Article V, Section 5.3, the Corporation has agreed to indemnify and hold harmless the Department for certain costs and expenses "which are attributable to or arising out of the operation of the GDPs by the Corporation after July 1, 1993."

The Act and the Lease establish that the Corporation is responsible for the operation of the gaseous diffusion plants and the Department is responsible for the decommissioning and decontamination associated with preexisting conditions. Consistent with applied contract principles, it is the Department's position that depleted uranium and waste generated by the Corporation are the financial responsibility of the Corporation, and are not subject to the Fund established by the Act. Because the Department does not believe it is financially responsible for the conversion and ultimate disposition of the Corporation's depleted uranium, the Department would recommend inclusion of the financial responsibility requirements as set forth in § 76.35(l). Although the Department does not intend to take a position with respect to the actual form the financial protection should take, the Department would recommend that the NRC consider that, pursuant to the Act, the Corporation is intended to ultimately undergo a privatization process so that the entity NRC is regulating would no longer be a Government Corporation, but would, in fact, be a private entity.

Assessment of Accidents, § 76.85:

The requirement in this section that the assessment of accidents consider only the radiological consequences of accidents is not consistent with the discussion of § 76.85 in the Supplementary Information: Technical Safety Requirements, in which the commission indicates that it is proposing that the Corporation evaluate intakes of soluble uranium and any other chemicals used on site based on their chemical toxicity.

Quality Assurance:

Section 76.93, *Quality Assurance*, requires "The Corporation shall execute the applicable criteria in a graded approach to the extent that is commensurate with the importance to safety." The term "graded approach" is not defined in Section 76.4, *Definitions*, or 76.93. The Department suggests the NRC define "Graded Approach" as a process by which the level of analysis, documentation and actions necessary to comply with a requirement in this part are commensurate with:

1) The relative importance to safety, safeguards and security,
2) The magnitude of any hazard involved;
3) The life cycle stage of a facility;
4) The programmatic mission of a facility;
5) The particular characteristics of a facility; and
6) Any other relevant factor.

10 CFR 20: Standards for Protection Against Radiation

Implementation of 10 CFR 20 will result in the revision to numerous administrative and procedural requirements. As such, phasing in of the administrative and procedural requirements portion of this chapter within a reasonable time period after the promulgation date of Part 76 is warranted. This time period should be based upon a schedule that achieves implementation in a timely, cost-effective manner.

SUPPLEMENTARY INFORMATION
C. *Technical Safety Requirements*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: Section 76.35, *Contents of Applications*. This section specifies that applications must include a safety analysis report, a compliance status report... Proposed Text: Section 76.35, *Contents of Applications*. This section specifies that applications must include a safety analysis report, **technical safety requirements as discussed in § 76.87,** a compliance status report...	Includes the technical safety requirements as part of the application consistent with 10 CFR 76.35(c).

Subpart A, Section 76.1, *Purpose*

PROPOSED TEXT CHANGES	JUSTIFICATION/COMMENTS
Current Text: (a) This part establishes requirements that will govern the operation of the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky. Proposed Text: (a) This part establishes requirements that will govern the operation of the **Portsmouth and Paducah Gaseous Diffusion Plants located in Piketon, Ohio and Paducah, Kentucky, respectively.**	This change corrects the title of the Portsmouth and Paducah Gaseous Diffusion Plants, corrects the location of these plants, and is consistent with the title of this Part.

Subpart A, Section 76.2, *Scope*

PROPOSED TEXT CHANGES	JUSTIFICATION/COMMENTS
Current Text: The regulations in this part apply only to the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky, leased by the Department to the Corporation. Proposed Text: The regulations in this part apply only to **those portions of the Portmouth and Paducah Gaseous Diffusion Plants leased by the Corporation, per the Lease Agreement between the Department of Energy and the United States Enrichment Corporation.**	Proposed text change more accurately references the facilities operated by the Corporation as those identified as "leased" facilities in the Lease Agreement.

Subpart A, Section 76.4, *Definitions*

PROPOSED TEXT CHANGES	JUSTIFICATION/COMMENTS
Current Text: *Corporation* means the United States Enrichment Corporation, 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. Proposed Text: *Corporation* means the United States Enrichment Corporation, a Corporation that is authorized **by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy.**	This definition of *Corporation* is more accurate, and clarifies the arrangement between the Department and the Corporation.

Subpart A, Section 76.4, *Definitions*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: *Limiting conditions for operation* means the lowest functional capability of performance levels of equipment required for safe operation of the plant. Proposed Text: *Limiting conditions for operation* means the lowest functional capability or performance level of **structures, systems, components, and their support systems required for normal safe operation of the plant.**	Proposed definition is consistent with current DOE Orders, and provides adequate limiting condition.

Subpart A, Section 76.4, *Definitions*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: *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. Proposed Text: ***Gaseous diffusion 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 in the isotope 235, using gaseous diffusion technology; or **(3) Leased facilities at the Portsmouth and Paducah gaseous diffusion plants as established by the Lease Agreement between the Department and the Corporation.**	This change more accurately defines uranium enrichment by gaseous diffusion.

Subpart A, Section 76.4, *Definitions*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Add the following definitions: *Action* means the steps listed in the applicable technical safety requirements that are required to be performed when the specified Limiting Condition for Operation, Safety Limit, or Limiting Control Setting are not met. *Alert* means events in progress or having occurred which involve an actual or potential substantial reduction in the level of facility safety protection. *Change* means a physical or procedural modification, addition, or deletion which affects the accuracy and completeness of the application for certification. *General emergency* means events which are in progress or have occurred that involve actual or eminent catastrophic failures of facility safety systems with the potential of loss of confinement integrity, catastrophic degradation of facility protection systems, or catastrophic failure in safety or protection systems. *Lease Agreement* means the agreement entered into as of July 1, 1993, and any subsequent revisions between the United States Department of Energy and the United States Enrichment Corporation.	These terms should be defined in § 76.4 to make clear their meaning in subsequent sections (e.g., § 76.68, § 76.81, § 76.83, and § 76.91.) This specifically defines the "Lease Agreement" referenced in 10 CFR 76.

Subpart A, Section 76.4, *Definitions*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Add the following definitions: *Radioactive material* means source material, special nuclear material, or byproduct material received, possessed, used, transferred, or disposed of under Part 76. *Site area emergency* means events which are in progress or have occurred involving actual or likely major failure(s) of facility safety or safeguards systems needed for the protection of onsite personnel, the public health and safety, the environment, or national security. *Unclassified Controlled Nuclear Information* is information whose unauthorized dissemination is prohibited under Section 148 of the Atomic Energy Act. *Unreviewed safety question* means a change which involves any of the following: (1) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (2) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (3) if the margin of safety as defined in the basis for any technical safety requirement is reduced.	These terms should be defined in §76.4 to make clear their meaning in subsequent sections. This definition is consistent with DOE Order 5635.1A, dated 2-12-88. This text provides the needed definition for § 76.68.

Subpart A, Section 76.21 *Certificate Required*

PROPOSED TEXT CHANGES	JUSTIFICATION/COMMENTS
Current Text: None exists. Proposed Text: Add the following at the end of § 76.21: Notwithstanding the requirements of § 30.41, § 40.41, and § 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, or the compliance plan approved, pursuant to this part.	Clarification is need to ensure that other licensees are authorized to transfer byproduct material, source material, or special nuclear material to the Corporation.

Subpart B, Section 76.33, *Application Procedures*

PROPOSED TEXT CHANGES	JUSTIFIC \TION/COMMENTS
Current Text: 76.33(c)(2)(iv) Sufficient information for the Commission to prepare an environmental assessment.	The Commission has already prepared a Finding of No Significant Impact. Only specific differences should be addressed.
Proposed Text: 76.33(c)(2)(iv) Any information concerning deviations from the published Environmental Impact Statement, Environmental Assessments, or environmental permits under which the plants currently operate from which the Commission can prepare an environmental compliance report.	It is assumed the NRC was referring to its annual reporting requirements as referenced in Section 1701(b) of the Energy Policy Act. The term "environmental assessment" has a very specific meaning in the National Environmental Policy Act, and may be misleading.

Subpart B, Section 76.35, *Contents of Applications*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text, 76.35 (f): (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 offsite. Add the following text to 76.35(f): The Corporation is specifically prohibited from shipping formula quantities of high strategic special nuclear material (Category I) and special nuclear material of moderate strategic significance (Category II) offsite.	Present language could be interpreted as not requiring a transportation plan for categories I and II materials. Physical protection of offsite shipments is needed for all categories of special nuclear material (SNM). The Corporation will not transport offsite Category I and Category II material.

Subpart B, Section 76.35, *Contents of Application*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text, 76.35(i): (i) An application which contains Restricted Data, classified National Security Information, Safeguards Information, proprietary data, ... Proposed Text, 76.35(i): (i) An application which contains Restricted Data, classified National Security Information, Safeguards Information, **Unclassified Controlled Nuclear Information**, proprietary data, ...	The application may contain Unclassified Controlled Nuclear Information.

Subpart B, Section 76.35, *Contents of Application*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (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. Proposed Text: (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 **depleted uranium and** waste expected, identification of radioisotopes contained in the waste, physical and chemical forms **of the depleted uranium and waste**, and plans for managing the **depleted uranium and** waste, **and plans for ultimate disposition of the waste and depleted uranium prior to turnover of the facilities to the Department of Energy under the terms of the Lease Agreement between the United States Enrichment Corporation and the Department.**	Proposed text recognizes that depleted uranium is a byproduct, not a waste. Proposed text recognizes that the Corporation is responsible for depleted uranium and waste that it generates, and recognizes that NRC is responsible for regulation of the Corporation until a facility is returned to DOE under the terms of the Lease Agreement.

Subpart B, Section 76.35, *Contents of Application*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text, 76.35(l): (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 established 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.	Proposed text recognizes that the Corporation is responsible for depleted uranium and waste that it generates and recognizes that NRC is responsible for regulation of the Corporation until a facility is returned to the Department under the terms of the lease agreement. Proposed text recognizes that the Corporation is financially responsible for the depleted uranium it generates, waste it generates during operations, and waste it generates as a result of placing the facilities in cold shutdown, Proposed text recognizes that the Department is not responsible for these costs under the Uranium Enrichment Decontamination and Decommissioning Fund.

Subpart B, Section 76.35, *Contents of Application*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Proposed Text, 76.35(l): (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, any waste generated **during operations and any waste generated as a result of completing the turnover requirements specified in the Lease Agreement.** The Corporation shall established 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; **to adequately process, manage, and dispose of mixed and radioactive wastes generated by operations; and to adequately process, manage, and dispose of mixed and radioactive wastes generated as a result of completing the turnover requirements specified in the Lease Agreement.** 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, a basis for cost estimates for management and disposal of mixed and radioactive wastes generated during operation and a basis for cost estimates for mixed and radioactive wastes generated as a result of completing the turnover requirements specified in the Lease Agreement,** and must include means of adjusting cost estimates and associated funding levels **for the duration of the Lease Agreement**. 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.	

Subpart B, Section 76.45, *Application for Amendment of Certificate*

PROPOSED CHANGES	JUSTIFICATION/COMMENTS
Current Text: 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. Proposed Text: 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 **shall be executed in a signed original by a duly authorized officer of the Corporation under oath or affirmation** and should contain sufficient information for the Director to make findings of compliance **or acceptability** for the proposed activities as required in the original certificate.	Proposed change requires proposed activities be submitted under oath, consistent with § 76.33(b). NRC may want to consider language that treats approval of the Compliance Plan separate from the Certificate of Compliance consistent with Subpart C, Sections 76.51 and 76.62.

Subpart C, Section 76.60, *Regulatory Requirements Which Apply*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: 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. Proposed Text: The Corporation shall provide adequate protection of the public health and safety and provide for the common defense and security. 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 demonstrate compliance with the provisions of this part.	The proposed text change more accurately reflects the regulatory requirements for certification by the NRC without relieving the Corporation from the responsibility of protecting the public health and safety.

Subpart C, Section 76.64, *Denial of Certificate or Compliance Plan*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (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. Proposed Text: (c) Before a denial of an application for a certificate of compliance, the Director shall advise the Corporation **and the Department** in writing of any areas of noncompliance with the Commission's regulations and offer **the Department** an opportunity to submit a **revised** compliance plan regarding those areas of noncompliance identified.	The Department has responsibility for preparing initial compliance plan. The Department and the Corporation should be notified of NRC's denial of certificate or compliance plan. The Department is responsible for preparing the revised compliance plan. The Corporation cannot commit the Department to any course of action without prior Department approval.

Subpart C, Section 76.68, *Plant Changes*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (a)(2) The changes must be authorized by responsible management and approved by the plant safety review committee. Proposed Text: (a)(2) The changes **must be** approved by the **independent** safety review committee.	Proposed language is consistent with current plant policies and procedures, and achieves the intended result of the original text.

Subpart C, Section 76.68, *Plant Changes (cont'd.)*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (a)(4) The changes must not cause projections of the annual individual or cumulative occupational radiation exposures to increase significantly. (a)(5) The changes must not significantly affect the types of or increase the amount of effluent released offsite. Proposed Text: (a)(4) The change must not **involve a change in any condition to the certificate of compliance.** (a)(5) The change must not **involve a change to any condition to the approved compliance plan.**	Current language is vague, subject to interpretation, and potentially places restrictions on plant changes. Proposed language is consistent with other NRC regulations. Proposed language provides more definitive guidance regarding plant changes.

Subpart C, Section 76.68, *Plant Changes (cont'd.)*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text:	
(a)(6) The changes must not involve an unreviewed safety question.	Unreviewed safety question should be defined.
Add the following text to 76.87(a)(6).	
The proposed change shall be deemed to involve an unreviewed safety question (1) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (2) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (3) if the margin of safety as defined in the basis for any technical safety requirement is reduced.	Proposed language is consistent with other NRC regulations and current DOE Orders. Proposed language is consistent with the definition proposed in Subpart A, Section 76.4, *Definitions*.
Add the following text to § 76.87:	Proposed language provides more definitive guidance regarding plant changes.
(a)(7) The change must not **involve a change in the technical safety requirements as established under § 76.87.**	Proposed language is consistent with other NRC regulations.

Subpart C, Section 76.68, *Plant Changes (cont'd.)*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (b) These revisions must be submitted within 90 days of their adoption as specified in § 76.33 of this part. Proposed Text: (b) These revisions must be submitted **annually with the certification renewal.**	Proposed text is consistent with current nuclear industry practice.

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: None exists. Proposed Text, Paragraph (b): Insert the following after " ... dated to indicate each change." **The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with § 76.68(a).**	Clarification is needed to ensure that plant as-found conditions are appropriately evaluated.

Subpart C, Section 76.70, *Post Issuance*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (d) ...from the Corporation in order... Proposed Text: (d) ...from the Corporation, **signed under oath or affirmation,** in order...	Proposed text requires "further statements" be submitted under oath pursuant to Subpart B, § 76.33.

Subpart C, Section 76.76, *Backfitting*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
No changes to text.	Backfit requirements, as presently written, appear to allow the NRC staff sufficient flexibility to impose additional regulatory requirements as needed, yet require the NRC staff to justify the imposition through a cost/benefit analysis. See General Comments.

Subpart D, Section 76.83, *Transfer of Radioactive Material*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Delete 76.83 (d)(3)	Emergency shipments are not defined in the proposed rule. Continued implementation of current practices provides methods for shipment of material outside the normal process.

Subpart D, Section 76.85, *Assessment of Accidents*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: 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 .... public health and safety.	As recognized by the NRC, chemical toxicity of uranium could be the limiting factor in an accident analysis. The proposed text is consistent with *Supplementary Information: C. Technical Safety Requirements, Section 76.85.* Proposed text also defines minimum requirements for accident analyses.
Proposed Text: 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 **and/or chemically toxic** material. Special attention must be directed to assurance that plant operation will be conducted in a manner to prevent or to mitigate the radiological **and/or toxic** consequences from .... public health and safety. As a minimum the safety topics identified in § 76.87 (c) must be addressed.	The technical safety requirements will be limited to the requirements necessary for the protection from radiological and/or toxicological hazards.

Subpart D, Section 76.87, *Technical Safety Requirements*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (d)(3) ...by the technical requirements until...	It appears that the word *safety* was omitted.
Proposed Text: (d)(3) ...by the technical **safety** requirements until...	

Subpart D, Section 76.89, *Criticality Accident Requirements*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (a) "... This section is not intended to require monitoring systems for transport of special ..."	ANSI/ANS 8.3 defines areas of CAAS coverage as 700 grams and one percent enrichment. The proposed text excludes areas of the cascade below one percent, from an interpretation of coverage required.
Proposed Text: The following paragraph should be added to the end of § 76.89(a): **This section is also not intended to require monitoring systems for facilities or enclosed process areas that are:** **(1) physically separated from any areas where special nuclear material is handled, used, or stored (such separation shall be by a distance greater than one and one-half times the smallest facing dimension of any arrays of special nuclear material in adjacent areas), and** **(2) a. limited to uranium-235 enriched to less than one percent by weight, or** **b. 700 grams of uranium-235 contained in one percent or greater enriched uranium.**	Criticality is not possible below approximately 0.95% uranium enrichment. Approximately 840 grams minimum mass is required to achieve criticality at 90% or greater enrichment. A safety factor of 1.2 has been included to arrive at 700 grams for any enrichment >1%. ANSI/ANS 8.7, *Guide for Nuclear Criticality Safety*, provides definition for facilities outside of reactors. Physical separation is based upon § 5.6 of ANS 8.7, guideline for nuclear criticality safety for facilities outside of reactors.

Subpart D, Section 76.91, *Emergency Planning*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: 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: Proposed Text: The Corporation shall establish, maintain, and be prepared to follow a written emergency plan. **The plan must describe how the plant and offsite response organizations will respond to alerts, site area emergencies, and general emergencies.** The emergency plan submitted under § 76.35(d) shall include the following information:	The Department recommends Emergency Planning requirements consistent with the November 1993 draft.
Current Text: (c) Classification of accidents. A system for classifying accidents as alerts or site area emergencies. Proposed Text: (c) Classification of accidents. A system for classifying accidents as alerts, site area emergencies, **or general emergencies**.	Includes the three types of site emergencies, which is consistent with current plant operations.

Subpart D, Section 76.91, *Emergency Planning*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (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. Proposed Text: (h) Notification and coordination. A commitment to and a description of the means to promptly notify **and maintain continued communication throughout the event with** offsite response organizations **whenever an emergency is declared,** including the request for offsite assistance and medical assistance for the treatment of contaminated injured onsite workers, when appropriate.	Proposed text is consistent with other NRC regulations and current plant operations.

Subpart D, Section 76.91, *Emergency Planning*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (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. Proposed Text: (j) Training. A description of the performance objectives, and plans for the training that the Corporation will provide **to emergency response 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 **on an annual basis**. The training shall familiarize personnel with site-specific emergency procedures. The training must 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. Other site personnel must receive a general emergency preparedness course annually that describes the types of emergencies that could occur at their facility and the type of protective action required for each.	Proposed text is consistent with other NRC regulations.

Subpart D, Section 76.91, *Emergency Planning*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: (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 participated in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios. . . Proposed Text: (l) **Drills and** exercises. Provisions for conducting quarterly communications checks with offsite response organizations and **annual** onsite exercises to test response to simulated emergencies. Communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. **Drills must test capability of individual plan elements. Exercises must test major portions of the emergency plan.** The Corporation shall invite offsite response organizations to participate in the **annual** exercises. Exercises shall use accident scenarios...	Proposed text is consistent with other NRC regulations.

Subpart D, Section 76.91, *Emergency Planning*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: None exists. Proposed Text: Add the following text to the end of § 76.91, Emergency Planning: (o) Emergency operations center. Provisions for an onsite emergency operations center to be established for the duration of all postulated emergencies, or an alternate emergency center, must be established. The emergency operations center must be capable of supporting assessment, evaluation, and direction of emergency response organization activities. The Corporation shall also notify the NRC Operations Center, as required in § 76.120, after notification of the appropriate offsite response organizations of an emergency. A record or log of emergency response actions must be maintained for a period of two years and made available for inspection as required by § 76.121. (p) Public notification. A description of the means of notifying the public located in emergency planning zones (EPZ), established by the plant, of basic emergency planning and information. The established EPZ at the plant shall be appropriate for planning and response to radiological and toxicological hazards.	Proposed text is consistent with other NRC regulations. Includes the requirement for an Emergency Operations Center and an Emergency Planning Zone, which is consistent with current requirements

Subpart E, Section 76.111, *Physical Security, Material Control and Accounting, and Protection of Certain Information*

PROPOSED TEXT CHANGES	JUSTIFICATION/COMMENTS
Add this sentence to the end of § 76.111, § 76.115(c), and § 76.117(c). Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information shall be protected at a level equivalent to that required for Safeguards Information **pursuant to § 73.21**.	The application for certification may contain Unclassified Controlled Nuclear Information.

Subpart E, Section 76.113, *Formula Quantities of Strategic Special Nuclear Material - Category I*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Delete the last sentence of 76.113(c). See proposed text changes for § 76.111.	Propose this sentence be moved to the end of § 76.111.

Subpart E, Section 76.119, *Security Facility and Safeguarding of National Security Information and Restricted Data*

PROPOSED TEXT CHANGE	JUSTIFICATION/COMMENTS
Current Text: The requirements for security facility approval and for safeguarding of classified matter are contained in Part 95 of this chapter. Proposed Text: The requirements for security facility approval and for safeguarding of classified matter are contained in Part 95 of this chapter **and the applicable DOE procedures and practices. For the purpose of this chapter, the Corporation is permitted to continue use of the applicable DOE procedures and practices when a conflict occurs between Part 95 and the DOE documents.**	Proposed text will provide equivalent security and safeguarding of security matter.