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(7)

April 11, 1994

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

Dear Mr. Chilk:

The following comments are submitted by the United States Enrichment Corporation (USEC or Corporation) on proposed 10 CFR Part 76 -- the Nuclear Regulatory Commission's (NRC or Commission) proposed standards for "Certification of Gaseous Diffusion Plants," 59 Fed. Reg. 6792 (February 11, 1994). USEC appreciates the opportunity to submit comments on the proposed rule as well as NRC's prior consideration of the Corporation's July 15, 1993, recommendations for Part 76 included as Appendix A to the NRC's Federal Register notice.

The proposed NRC standards will establish the regulatory requirements governing the continued operation of the Paducah and Portsmouth gaseous diffusion plants (GDPs) once NRC assumes regulatory oversight over the GDPs. The Part 76 standards are unusual in that they will set general regulatory requirements applicable only to the operation of the GDPs, and will for the first time subject those facilities to NRC regulation. Thus, the content and clarity of the regulations are critically important to the Corporation in its attempts to meet its statutory obligations under the Energy Policy Act of 1992. [1]

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[1] The Energy Policy Act created the corporation to "operate as a business enterprise on a profitable and efficient basis . . .; to maximize the long-term value of the corporation" to the U.S. Treasury; to comply with requirements established to assure "public health [and] safety"; and for other purposes. 42 U.S.C. § 2297a (1992).

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As the Commission has recognized, the GDPs have operated safely for approximately 40 years. (59 Fed. Reg. 6972). In addition, in its Statements of Consideration accompanying the proposed rule (Statements), the Commission has requested comments on "whether any of the proposed requirements exceed those necessary to protect public health and safety and, if so, whether the added safety protection warrants the costs that would be incurred to implement the requirement." Id. USEC believes that changes in the manner in which the GDPs have been operated should be limited to those clearly necessary for assuring adequate public health and safety, safeguards and security, and for which the costs are justified.

Many provisions of the proposed rule fulfill that objective. USEC concurs with the basic form, content, and intent of the proposed rule. We particularly endorse the proposed procedures for notice and public participation in the certification process, the inclusion of a categorical exclusion from the National Environmental Policy Act (NEPA) reviews, the general content of the certification application, the backfitting provision, and the inclusion of other generally applicable NRC regulations (e.g., Parts 19, 20, 21, 26, 71, 73, 74, and 95).

In NRC Staff's Supplement to its Draft Regulatory Analysis on the proposed rule, it summarizes its conclusions on the impact on USEC of implementing proposed Part 76. The Staff generally concludes that the rule "will not impose an unreasonable implementation burden." Staff Supplement at page 2.

We agree with respect to many aspects of the proposed rule. However, there are a number of specific provisions that, if adopted in their presently proposed form, will impose requirements that either are not necessary to assure adequate public health and safety, safeguards and security, or will create very large implementation burdens that are not warranted by the potential benefit.

The Commission has specifically requested comments on the Draft Regulatory Analysis. (59 Fed. Reg. 6799). USEC's comments (in Enclosure A to this letter) address those areas where the impact of the proposed Part 76 requirements is substantial and where imposition of those requirements does not appear to be necessary to assure protection of the public or the common defense and security. We have also attempted to quantify, where possible, the approximate cost impact of such requirements in the most significant areas. These include the proposed regulations addressing: criticality accident requirements (section 76.89), training (section 76.95), and material control and accountability (section 76.117). There are other areas as well where the proposed rule may create substantial cost impacts, but where such impacts are not readily quantifiable. These include the proposed regulations on plant changes (section 76.68) and quality assurance (QA) (section 76.93) and the proposed use of numerical limits in accident assessments.

Some provisions of the proposed rule also appear to go well beyond existing requirements applicable to NRC fuel cycle licensees. Because the hazards associated with operation of the GDPs are very similar to those at existing NRC-licensed fuel cycle facilities, the language of the Part 76 regulations (and the practices deemed acceptable for compliance with the regulations) generally should parallel those applicable to the licensed fuel cycle industry.

In addition, certain attributes specific to the GDPs warrant some modifications to the proposed standards. These modifications generally are based on USEC's belief that existing practices at the GDPs assure protection of the public and the common defense and security, or on the unique nature of USEC as both a corporation and an agency of the U. S. Government formed to fulfill certain defined national goals and public purposes.

USEC's detailed comments on proposed Part 76 are provided in the Enclosures to this letter. Enclosure A contains section-by-section comments on the proposed Part 76. It also contains USEC's responses to the specific requests for comment contained in the Commission's Statements accompanying the proposed rule. In Enclosure B, USEC provides a "markup" of the proposed rule containing the specific regulatory language recommended by USEC. A summary of our principal comments is as follows:

(1) **Format and Content of the Application**

Proposed section 76.35 prescribes a format and content of the application for a certificate that differs from that used on applications submitted by other parts of the fuel cycle industry under Part 70 -- without any clear basis for departing from industry practice. USEC recommends that section 76.35 be revised to clearly acknowledge that the application will be submitted in the format of a set of binding certificate conditions and Operational Safety Requirements (Part I), a Safety Demonstration (Part II), and separate Plans addressing QA, security and safeguards, emergency planning, and material control and accountability. This approach will provide a high degree of consistency with proven industry practice. (See Enclosure A, section 23).

(2) **Waste and Depleted Uranium Funding**

We concur with the proposal in NRC's Statements accompanying the proposed rule to delete the proposed funding requirements (10 CFR § 76.35(1)). USEC believes that they are inconsistent with the Energy Policy Act and unnecessary. Financial arrangements for waste and depleted uranium disposition will be established by the Department of Energy (DOE) and USEC pursuant to the Energy Policy Act and the July 1, 1993, Lease. (See Enclosure A, section 23).

(3) **Numerical Limits for Accident Assessment**

USEC is concerned with NRC's proposed use of numerical limits as an apparent acceptance criterion for accidents -- both for soluble uranium and total radiation dose. We believe that use of numerical limits in this manner represents a significant departure from past NRC practice for operating plants. We recommend that neither the rule nor the accompanying Statements address such numerical limits. (See Enclosure A, section 44).

(4) **Plant Changes**

Proposed section 76.68 is overly restrictive, would substantially impede USEC's ability to make even minor changes unrelated to safe operation, and would be unduly costly to implement. It also would establish requirements that have not been applied to the fuel cycle industry and are even more stringent than those imposed upon reactor licensees under Part 50. USEC strongly recommends that proposed section 76.68 be deleted and replaced with USEC's proposal set forth in Enclosure B. That proposal is closely modeled after 10 CFR § 50.59 with adjustments to reflect USEC's recommendations for safety analysis and Operational Safety Requirements as described in our recommended section 76.35. (See Enclosure A, section 38).

(5) **Backfits**

USEC strongly endorses the proposed backfit provision as written. The GDPs have operated safely for approximately 40 years. Regulatory positions that alter existing practices should be carefully scrutinized. We believe that the backfit provision should apply to any plant changes necessitated by NRC rules or interpretations after Part 76 becomes final, and that the standards for requiring a backfit should be consistent with 10 CFR § 50.109. (See Enclosure A, section 41).

(6) **Quality Assurance Program**

The reference in the proposed rule to "graded" implementation of "applicable" ASME NQA-1-1989 criteria in lieu of 10 CFR Part 50, Appendix B criteria is an appropriate and positive change from prior Staff proposals. It does not, however, provide the level of clarity and specificity that we believe desirable. Depending upon the interpretation of the NQA-1 criteria, implementation of the proposed QA requirements could be extremely costly. USEC intends to work with the fuel-cycle industry to develop a more precise set of QA standards to govern both the GDPs and the licensed fuel cycle facilities and expects to propose appropriate

modifications to Part 76 in the future. At present, however, USEC believes that if NQA-1 is properly interpreted with due regard for the circumstances applicable to the GDPs, it generally can serve as an appropriate framework for NRC evaluation of USEC's QA program in the certification process. (See Enclosure A, section 48).

(7) **Criticality Accident Requirements**

The proposed criticality accident requirements (10 CFR § 76.89) are more stringent and burdensome than 10 CFR Part 70 (section 70.24) since they do not exempt areas that contain quantities of U^{235} below certain specified thresholds from the requirement to have criticality alarm coverage. The proposed regulation also does not recognize that there are large areas at the GDPs with very low enriched materials or controlled storage arrays that are not presently alarmed. It is unnecessary to require criticality alarms in these areas because criticality is not a credible event. USEC has proposed that section 76.89 be amended to include the exemptions contained in section 70.24 and to add other exemptions consistent with current practices at the GDPs. (See Enclosure A, section 46).

(8) **Training**

The proposed training rule (10 CFR § 76.95) would require USEC to develop and implement a "performance-based" training program similar to that adopted by the nuclear reactor industry and required by NRC in 10 CFR § 50.120. It goes well beyond current practice at the GDPs as well as 10 CFR Part 70. Imposition of the proposed training rule on USEC is unnecessary and would be extremely costly. USEC recommends that the rule be revised to delete the "performance-based" training requirement and instead to require USEC to implement a training program that assures that personnel are adequately trained to perform their nuclear safety-related functions. (See Enclosure A, section 49).

(9) **Physical Security**

The proposed physical security rules (10 CFR § 95.25 (a) (3)) would require 100 percent protective force checks of security containers on a daily basis. At present, under DOE requirements, only 25 percent protective forces checks are required daily for containers in controlled access areas, and are effective in assuring adequate physical security. USEC's proposed revisions to section 76.119 would authorize continuation of the existing level of protective force checks. (See Enclosure A, section 54).

(10) **Safeguards of Classified Matter**

Under DOE requirements, USEC implemented a Modified Accountability Plan for classified matter that does not appear to be authorized by NRC's proposed application of Part 95 to the GDPs. The existing program provides adequate protection for Classified Information and we are proposing a modification to section 76.119 to address this issue. (See Enclosure A, section 54).

USEC believes that incorporation of its recommendations into the final rule will contribute to a clear, effective, and efficient regulatory structure to govern the NRC's future regulatory oversight of the GDPs. If you have any questions, please contact me or Rob Woolley at (301) 564-3413.

Sincerely,

George P. Rifakes

2 Enclosures

ENCLOSURE A

UNITED STATES ENRICHMENT CORPORATION
SECTION-BY-SECTION COMMENTS ON
PROPOSED NRC STANDARDS FOR
CERTIFICATION OF GASEOUS DIFFUSION PLANTS

1. Section 19.2 Scope

This section applies 10 CFR Part 19 to the Corporation. USEC agrees that Part 19 generally should be applicable, but recommends two minor modifications. First, section 19.12 would require posting of Form NRC-3 "Notice to Employees" by each licensee "or applicant." Because USEC will remain under DOE regulatory jurisdiction until the initial certification process for the GDPs is completed, this section should not require such posting until 30 days after completion of certification pursuant to 10 CFR § 76.62 or § 76.64. The proposed change would avoid confusion in the transition from DOE to NRC regulatory oversight and give USEC time to complete the postings in an orderly manner. This modification to Part 19, which would be applicable only to USEC, is contained in our proposed section 76.60 in Enclosure B.

Second, for the reasons discussed under proposed section 76.10, section 19.30 ("Violations") should be amended to specify that, at the present time, civil penalties may be imposed only for violations of section 206 of the Energy Reorganization Act of 1974. This change to Part 19, which would be applicable only to USEC, is also contained in our proposed section 76.60.

2. Section 20.2 Scope

This section applies 10 CFR Part 20 to the Corporation. Applicable procedures and controls at the GDPs provide assurance that radiological doses to workers and members of the public are well below 10 CFR Part 20 limits. In addition, ALARA controls are in place. However, current DOE administrative and procedural requirements differ from those required by Part 20. Thus, there are numerous administrative and procedural modifications that will require substantial time to implement.

For example, an estimated 45 procedures will require development, review and implementation. At one site alone, additional training will be required on portions of the procedures for an estimated 1,600 individuals; 600-700 radiation workers will require more extensive training; and about 50 health physics technicians must be trained in all of the procedures. Similarly, the dosimetry programs at the GDPs are presently DOELAP accredited. Under Part 20, NVLAP accreditation is required. This is a lengthy process that requires submittal of programs and procedures, proficiency testing of dosimetry devices and on-site accreditation visits. Currently, proficiency testing is only done by NVLAP in the Spring. The first opportunity to submit dosimetry for such testing will be Spring, 1995. Receipt of NVLAP accreditation cannot be reasonably anticipated before the NRC's projected date for the initial certification (October, 1995).

Accordingly, USEC requests two years beyond the promulgation date of Part 76 to complete its efforts to convert the administrative and procedural elements of its radiation protection program to meet the new Part 20 requirements. If necessary, such efforts could be addressed in a plan for achieving compliance, but USEC believes that the rule itself should provide for a delayed implementation date for these administrative changes in order to avoid the unnecessary administrative burden of preparing a compliance plan in this area.

USEC agrees that compliance with Part 20 dose limits should become immediately effective upon receipt of the certificate and/or approved compliance plan. Thus, USEC would assure that applicable dose limits are not exceeded while implementing the Part 20 administrative and procedural controls in an orderly fashion.

Finally, for the reasons discussed under proposed section 76.10, section 20.2401 ("Violations") should be amended to specify that, at the present time, civil penalties may be imposed only for violations of section 206 of the Energy Reorganization Act of 1974. This change to Part 20, which would be applicable only to USEC, is contained in our proposed section 76.60.

3. Section 21.2 Scope

This section applies 10 CFR Part 21 to the Corporation. USEC agrees that Part 21 generally should be applicable but recommends three minor modifications. Section 21.6 (requiring posting of section 206 of the Energy Reorganization Act of 1974 and applicable procedures) and section 21.21 (requiring notification and reporting to the NRC of certain defects and failures to comply) should not be applicable to the Corporation until the NRC assumes regulatory oversight over the GDPs -- when it completes the initial certification process. USEC is requesting 30 days after that date to meet the section 21.6 posting requirement. In addition, we recommend that section 21.31 ("Procurement documents") be amended to clarify that only those procurement documents issued by USEC after it submits its initial application for a certificate must specify that "the provisions of 10 CFR Part 21 apply." Until the initial certification process is completed, DOE has regulatory oversight authority over the GDPs. The recommended changes would assist in reducing confusion concerning the respective authorities of the NRC and DOE during the transition from DOE to NRC regulatory oversight. These changes to Part 21, which would be applicable only to USEC, are contained in our proposed section 76.60.

4. Section 26.2 Scope

This section applies 10 CFR Part 26 to the Corporation "only if" the Corporation engages in activities involving formula quantities of strategic special nuclear material. 59 Fed. Reg.

6800. USEC agrees with this provision. Under the terms of the January 26, 1994 "Joint Statement of Understanding" between the DOE and the NRC (59 Fed. Reg. 4729 (Feb. 1, 1994)), DOE has agreed to retain title to and possess uranium enriched to 20% or more U^{235} at the Portsmouth GDP. USEC activities at Portsmouth are not contemplated to involve formula quantities of strategic special nuclear material.

5. Section 51.22 Criterion for Categorical Exclusion

This section establishes a categorical exclusion from 10 CFR Part 51 environmental reviews for the issuance, amendment, modification or renewal of a certificate of compliance for the GDPs. USEC agrees that such a categorical exclusion is appropriate.

6. Section 70.1 Purpose

This section applies the physical security and material control and accounting (MC&A) provisions of 10 CFR Part 70 to the Corporation "as provided in Part 76." 59 Fed. Reg. 6800. USEC agrees with this section. However, we do have various recommendations with respect to the specific physical security and MC&A provisions incorporated into proposed Part 76. See comments on section 76.117.

7. Section 71.0 Purpose and Scope

This section applies 10 CFR Part 71 to the Corporation. USEC agrees with this section.

8. Section 73.1 Purpose and Scope

This section applies 10 CFR Part 73 to the Corporation, "as provided in Part 76." 59 Fed. Reg. 6800. USEC agrees with this section. However, we are proposing certain changes and clarifications to the specific physical security requirements incorporated into Part 76. See comments on sections 76.35(g) and 95.3.

9. Section 74.2 Scope

This section applies 10 CFR Part 74 to the Corporation "as provided in Part 76." 59 Fed. Reg. 6800. USEC agrees with this section. However, we are proposing certain changes and clarifications to the specific Part 74 MC&A requirements incorporated into Part 76. See comments on section 76.117.

10. Section 76.1 Purpose

This section states that 10 CFR Part 76 will govern the operation and certification of the GDPs USEC agrees with this section.

11. Section 76.2 Scope

This section applies 10 CFR Part 76 "only to the gaseous diffusion plants . . . leased by DOE to the Corporation" and provides notice to persons that they may be individually subject to enforcement action for violations of the "deliberate misconduct" regulation (section 76.10). 59 Fed. Reg. 6801. Because only certain portions of the GDPs are leased by and under the control of USEC, and subject to NRC regulation, this section should be amended

to clarify that Part 76 applies only to "the operation of those portions of" the gaseous diffusion plants leased to the Corporation by DOE or "operated by the Corporation pursuant to a plan for the privatization of USEC that is approved by the President."

12. Section 76.4 Definitions

Section 76.4 defines "Corporation" as the USEC -- "a wholly-owned corporation of the United States. . . ." 59 Fed. Reg. 6801. The Energy Policy Act of 1992 requires USEC to submit to the President and Congress a plan for the transfer of ownership of the Corporation to private investors. The definition of "Corporation" should be amended to clarify the continued applicability of Part 76 to the operation of the gaseous diffusion plants after such privatization. In Enclosure B, we have suggested that the definition be amended accordingly.

Under proposed section 76.87, USEC also has recommended certain changes to the proposed "technical safety requirements" including deletion of the terms "Limiting conditions for operation", "Limiting control settings", "Safety limits", "Surveillance requirements" and "Administrative controls". In view of our comments on section 76.87, we are recommending that the definitions of these terms be deleted from section 76.4.

Finally, USEC recommends that definitions for the terms "Alert" and "Site area emergency" be added as they presently appear in 10 CFR § 70.4. These terms are used in section 76.91(c) of the proposed rule.

13. Section 76.5 Communications

This section establishes procedures for written communications with the NRC. USEC agrees with this section.

14. Section 76.6 Interpretations

This section addresses interpretations of Part 76 requirements by NRC officers and employees. USEC agrees with this section.

15. Section 76.7 Employee Protection

This section prohibits discrimination against employees for engaging in protected activities under Section 211 of the Energy Reorganization Act of 1974, as amended. USEC agrees that section 76.7 should be applicable to the Corporation, but we are suggesting a change to address the transition from DOE to NRC regulatory oversight. Section 76.7(e)(1) would require posting of Form NRC-3 "not later than 30 days after an application is docketed. . . ." 59 Fed. Reg. 6803. Because USEC will remain under DOE oversight until the initial certification process is complete, we suggest that posting not be required until 30 days after the initial certification.

16. Section 76.8 Information Collection Requirements

This section states that Office of Management and Budget clearance is not required for the information collection requirements contained in Part 76. USEC agrees with this section.

17. Section 76.9 Completeness and Accuracy of Information

This section requires information provided to the NRC to be complete and accurate in all material respects. It also requires notification to the NRC Regional Administrator whenever USEC identifies information which it has determined to have "for the regulated activity a significant implication for public health and safety or common defense and security." 59 Fed. Reg. 6803. USEC agrees that this section should apply to the Corporation.

However, because USEC will remain under DOE oversight until the NRC assumes regulatory oversight, we suggest that the notification provision not be immediately effective upon issuance of Part 76. Instead, USEC recommends that section 76.9(b) become effective at the time that USEC submits its initial application pursuant to 10 CFR § 76.33.

18. Section 76.10 Deliberate Misconduct

This section prohibits deliberate misconduct and subjects persons who engage in such misconduct to possible enforcement action. USEC generally agrees with this provision. Section 76.10 is similar to 10 CFR § 70.10 which is applicable to special nuclear material licensees. Both provisions apply the NRC's enforcement procedures (10 CFR Part 2, Subpart B) including the procedures for issuance of civil penalties. However, as the NRC appears to have

recognized, it does not presently have the authority to impose civil penalties on USEC, except in certain specific circumstances.

Section 234 of the Atomic Energy Act (AEA) provides the NRC with the authority to impose civil penalties for: (1) violations of the licensing provisions of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the AEA; or for (2) violations for which a license may be revoked under AEA section 186. 42 U.S.C. § 2282(a) (1988). Section 234 makes no reference to the certification provisions incorporated into section 1701 of the AEA by the Energy Policy Act. In fact, in section 3 of the proposed "Omnibus Nuclear Power Safety and Security Enhancement Act", the NRC has recommended that section 234 be amended to permit the imposition of civil penalties for violations of "the certification provisions of section 1701, or any rule or regulation issued thereunder." H.R. 2170, 103D Cong. 1st Sess. (1993). Thus, at present, the NRC does not have the authority to issue civil penalties against USEC with one exception.[1/] Therefore, we have proposed a change to section 76.10 to assure consistency with the NRC's existing statutory authority to impose civil penalties.

1/ Under proposed section 76.131(b), the NRC may impose civil penalties for violations of section 206 of the Energy Reorganization Act of 1974 and 10 CFR Part 21. The NRC's authority in this regard is derived from AEA section 1312(e) (added by the Energy Policy Act), which explicitly applies section 206 to the directors and officers of the corporation.

19. Section 76.21 Certificate Required

This section states that the GDPs may not be operated without the issuance of a certificate of compliance or an approved compliance plan. Under the Energy Policy Act, Congress intended to provide for the continued operation of the GDPs under DOE nuclear safety, safeguards and security controls until the NRC published final regulatory standards and issued the initial certificate of compliance and/or approved a plan for achieving compliance. 42 U.S.C. § 2297f (1992). This is clearly confirmed in the NRC/DOE Joint Statement of Understanding. 59 Fed. Reg. 4729.

USEC's authority to continue to operate the GDPs under DOE oversight after Part 76 becomes effective, but before the NRC completes the initial certification process, should be clarified in the regulations. Therefore, we recommend that this section be amended to state that "After the Commission issues the initial certificate of compliance and/or approves an initial plan for achieving compliance" the Corporation may not operate the GDPs without a certificate or approved compliance plan.

20. Section 76.23 Specific Exemptions

This section would give the NRC the authority to issue specific exemptions from the requirements of Part 76. USEC is a unique entity. While it will be subject to NRC regulatory procedures and standards like a private party, it has also been tasked by Congress to achieve certain national goals and public purposes as an agency of the federal government -- and even if the Corporation is ultimately "privatized."

In recognition of this unique status, the Corporation recommends that this section be expanded to provide that the Commission may grant exemptions where certain "special circumstances" exist. We believe that such special circumstances are present where the Corporation or the Department advises the NRC in writing that the exemption would be in furtherance of the common defense and security of the United States, the nonproliferation of atomic weapons, or any of the other important governmental functions identified in the statutory purposes of the Corporation set forth in Section 1202 of the Atomic Energy Act. There may be other special circumstances, as well, that warrant an exemption from the applicable regulations.

21. Section 76.31 Annual Application Requirement

This section would require the Corporation to apply for a certificate of compliance on or before April 15 of each year. The footnote to the section would require USEC's initial application to be tendered no later than six months after publication of the final Part 76 or by April 15, 1995 "whichever is earlier." 59 Fed. Reg. 6804. The Energy Policy Act requires USEC to apply annually to the NRC for a certificate of compliance, and it requires the NRC to promulgate final regulatory standards by October, 1994. It does not, however, establish any specific deadline for USEC's submittal of an initial application.

Section 76.31, as written, would impose a deadline on USEC's initial application that would give the Corporation at most

6 months after publication of the final rule to apply for a certificate of compliance (if the final Part 76 is published promptly in October, 1994). If the NRC is delayed in finalizing the rule, USEC could be afforded less than 6 months to prepare and submit its application.

Preparation of the initial certificate application is a complex and unique task. Sufficient time must be provided to enable the Corporation to develop a complete and adequate application and to make necessary programmatic, procedural and plant changes to assure that the GDPs meet the final NRC standards. Application preparation is well underway and USEC expects to submit the application by April, 1995 (six months after the anticipated date of promulgation of final Part 76). Of necessity, however, critical aspects of USEC's application and its underlying programs are highly dependent upon the precise form of the final rule. There is no reason to compel the Corporation to submit the application any earlier than April, 1995 or to give USEC less than six months after Part 76 is finalized to complete its application. DOE's nuclear safety, safeguards and security oversight will, of course, apply to GDP operations pending NRC assumption of regulatory oversight.

USEC must assure that its application is complete and it wishes to assure that it is in compliance with the applicable requirements to the maximum extent possible, in order to limit the need for a compliance plan. Therefore, we strongly urge the

Commission to amend section 76.31 so that the initial application 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 later".

In addition, in new section 76.36 below, USEC is proposing the addition of a separate section governing the submittal of annual applications after the initial application for a certificate of compliance is filed. New section 76.36 would specifically address the timing and content of the annual submittals, leaving section 76.35 to address only the initial application. For the reasons discussed under section 76.36, section 76.31 should be changed to delete the April 15 deadline for annual applications and to simply require that the Corporation apply each year for a certificate of compliance "in accordance with section 76.36."

22. Section 76.33 Application Procedures

This section, among other things, generally defines the contents of the certificate application and the plan for achieving compliance. Because USEC is proposing a new section 76.36 to govern annual application submittals after the initial application, we recommend that this section be retitled "Initial Application Procedures" and that it be modified, as appropriate, to refer only to the initial application.

In addition, section 76.33(c)(2) would require USEC's compliance plan to address any "identifiable" areas of

noncompliance. Other NRC regulations governing the reporting of noncompliances, defects or significant information (e.g., 10 CFR § 21.1 and § 70.9(b)) require NRC licensees to promptly report once such noncompliances, defects or information have been identified by the licensee. Furthermore, it is not clear how the NRC would determine whether a particular noncompliance to be addressed in a compliance plan was "identifiable" by USEC. Therefore, USEC recommends that this term be deleted and that it be required to address those areas of noncompliance which USEC has "identified" as of the date of the filing of the application.

23. Section 76.35 Contents of Application

This section identifies the specific information to be provided in the application in subsections (a) through (m) of the proposed regulation. USEC agrees with the basic intent of this section and believes that most of the information submittal requirements are appropriate. We are proposing some substantial changes in the required format and structure of the application, as well as a few modifications to its scope and content.

The fundamental purposes of USEC's proposed changes are to conform the application more closely to prevailing practice and NRC regulatory guidance under Part 70, to clarify the format and nature of the information to be provided, and to eliminate information submittal requirements which are inappropriate or unnecessary. USEC believes that with its proposed changes, the application will contain ample information for the NRC to make a

fully-informed determination of regulatory compliance. The recommended modifications are described below.

Title and Applicability

In order to distinguish between the contents of the initial application and subsequent applications, the title of section 76.35 should be modified to address only the "Contents of Initial Application" and conforming changes should be made in the text of the regulation as well.

General Format and Content

USEC recommends that section 76.35 be revised to clearly prescribe a format and content which more closely resembles the format and content of a materials license application and which generally follows the guidance of NRC Regulatory Guide 3.52. Thus, under our proposal, the application would contain a "Part I" -- comprised of binding certificate "conditions" and Operational Safety Requirements (in lieu of the Technical Safety Requirements currently contained in the proposed rule) -- which could not be changed without prior NRC authorization. The Operational Safety Requirements (OSRs) would be the functional equivalent of the Technical Safety Requirements in the proposed rule. The terminology change is not viewed as a substantive change and is primarily intended to continue use of the phrase most familiar to plant operating and maintenance personnel.

The application would also include a "Part II" -- containing a Safety Demonstration (functionally equivalent to the

Safety Analysis Report presently called for by the rule). Review of the Safety Demonstration would be necessary in analyzing the need for prior NRC approval of "plant changes" under proposed section 76.68. USEC requests these changes in order to conform to standard practice for materials licensees.

Importantly, USEC is also proposing that the Safety Demonstration explicitly incorporate the requirements for accident analysis presently contained in section 76.85 of the proposed rule ("Assessment of Accidents"). Those requirements currently are not mentioned in section 76.35 although they are an essential part of the Safety Demonstration. Section 76.85 would then be deleted. USEC also is recommending that the 14 "safety topics" now listed in section 76.87 ("Technical Safety Requirements") be deleted. These topics are among the subjects appropriate for consideration in the accident analysis which will form the basis for specific OSRs.

Finally, the application would also contain separate program plans (addressing QA, emergency planning and other areas) in accordance with the proposed rule. The individual plans are discussed below.

Quality Assurance Program

USEC agrees with the proposed requirement to submit a Quality Assurance (QA) Plan as part of the application. Specific comments on the content of the Plan are discussed under proposed section 76.93.

Emergency Plan

USEC agrees with the proposed requirement to submit an Emergency Plan as part of the application. Specific comments on the content of the Plan are discussed under proposed section 76.91.

Material Control and Accounting Plan

USEC agrees with the requirement to submit an MC&A Plan as part of the application. However, section 76.35(e) would require that the Plan cover MC&A for special nuclear material (SNM) that the Corporation uses, possesses, "or has access to" -- including particular MC&A provisions for formula quantities of SNM and SNM of moderate and low strategic significance. This section should be clarified to state that USEC need not describe MC&A procedures for SNM where MC&A functions are the responsibility of DOE (e.g., the highly enriched uranium (HEU) "refeed" operation at the Portsmouth GDP) even though USEC personnel may have access to such material. Such access would, of course, be controlled by DOE.

Transportation Protection

USEC agrees with the proposed requirement to provide its plans for protecting the offsite transit of SNM of low strategic significance as part of the application. USEC proposes to include this information in a comprehensive "Security and Safeguards Plan" as a separate section on "Transportation Protection."

Physical Protection Plan

USEC agrees with the proposed requirement to provide its plans for physical protection as part of the application. USEC

proposes to include this information in the comprehensive "Security and Safeguards Plan" as a separate section on "Physical Protection."

In addition, as with proposed section 76.35(f) above, this section should be clarified to provide that USEC need not describe physical protection procedures for SNM where such physical security arrangements are the responsibility of DOE (e.g., HEU refeed at Portsmouth) even though USEC may have access to such material. Such access would, of course, be controlled by DOE.

Plan for Protection of Classified Information and Hardware

USEC agrees with the proposed requirement to submit its plans for protection of classified information and hardware in compliance with 10 CFR § 95.15(b) as part of the application. USEC proposes to include this information in the "Security and Safeguards Plan" as a separate section on "Protection of Classified Information and Hardware."

Segregation of Restricted Data, Classified National Security Information, Safeguards Information and Proprietary Data

USEC agrees with the proposed requirement to prepare classified or proprietary information in such a manner that all such information can be separated from the information to be made available to the public.

Waste and Depleted Uranium Program Description

This section would require USEC to describe the program for processing, management and disposal of mixed waste, radioactive

waste and depleted uranium. USEC generally agrees with this proposed requirement. However, for the reasons discussed under proposed section 76.35(1) below, this provision should be modified so that it is explicitly limited to waste generation, handling, management and disposal activities conducted "during plant operation and prior to plant shutdown and decontamination and decommissioning."

Waste and Depleted Uranium Funding - Section 76.35(1)

As presently stated in the proposed rule, this section would require USEC to describe "the funding program . . . for the ultimate processing and disposition of depleted uranium and any waste generated." 59 Fed. Reg. 6805. This would include financial surety arrangements, including cost estimates and financial guarantees, for conversion and disposition of depleted UF_6 and waste disposition.

In the NRC's Statements accompanying the proposed rule, it requests comment on the "appropriate interpretation" of the Energy Policy Act and states that it is:

> inclined to interpret the Act to terminate NRC regulatory jurisdiction . . . if and when the Corporation ceases operations . . . [since DOE would then be] responsible for the plants' decontamination and decommissioning (D&D) 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.

59 Fed. Reg. 6794. USEC believes that the NRC's interpretation is correct and that section 76.35(1) should therefore be deleted from the final rule.

Under the Energy Policy Act and the July 1, 1993 Lease Agreement between USEC and DOE, the NRC is responsible for regulatory oversight of the operation of the GDPs and DOE is responsible for the conduct of decontamination and decommissioning (D&D) at the facilities. Under section 1701(d) of the AEA, as added by the Energy Policy Act, the GDPs "may not be operated" unless the NRC makes a determination of compliance with its standards or approves a plan for achieving compliance. The AEA contains no language which would suggest that the NRC standards were intended to address D&D of the GDP facilities.

Section 1403(d) of the AEA, on the other hand, states that:

> The payment of any costs of decontamination and decommissioning, response actions, or corrective actions with respect to conditions existing before the transition date, in connection with property of the Department leased [by USEC] shall remain the sole responsibility of the Department. 42 U.S.C. § 2297c-2(d) (1992).

Furthermore, Section 4.6 of the July 1, 1993 Lease Agreement between DOE and USEC states that, with one relatively minor exception:[2/]

[2/] Under Section 4.5(c), the Corporation has agreed to pay any increase in D&D costs which arises out of its removal of any Capital Improvement at the GDPs.

> the Department will be responsible for and will pay the costs of all Decontamination and Decommissioning, including the costs of Decontamination and Decommissioning of the Leased Premises. . . .

USEC clearly has certain obligations to provide for the disposal of its waste, in accordance with the applicable Lease terms, and for the disposition of its depleted uranium tails. Waste generated and disposed of during plant operations has never been the subject of NRC financial assurance requirements applicable to its licensees and we assume that the proposed rule, as written, is not intended to address such wastes. For wastes generated during D&D and for USEC's tails disposition, the precise manner in which USEC's obligations are to be met is a matter to be addressed by DOE and USEC pursuant to the Energy Policy Act and the Lease -- and not as part of the NRC's standards.

Furthermore, since USEC is an agency of the federal government, we believe that, at the present time, any imposition by the NRC of financial assurance requirements similar to those applied to private industry is inappropriate and unnecessary. USEC strongly believes that there is no basis for the proposed funding requirements, and that section 76.35(l) should be deleted as recommended in the NRC Statements.

Compliance Status Report

This section would require USEC to provide a report on the status of other state, local and Federal permits, licenses and approvals. USEC agrees with this requirement.

24. Section 76.36 Annual Renewals

Proposed Part 76 does not presently contain a specific section devoted to the timing and content of annual applications to be submitted after the initial application. In its July 15, 1993 letter to the NRC, USEC proposed a specific section addressing such annual renewals (our proposed section 76.33 in Appendix A to the NRC's Federal Register notice). A separate section is required primarily to assure that the precise scope of the annual resubmittals is very clear and is distinct from the initial application.

The NRC has stated that "[f]or annual reviews after the initial certification, the Commission would focus on new information and changes from the previous year. . . ." 59 Fed. Reg. 6796. While we strongly agree that this is the appropriate focus, the precise content of the annual resubmittals should be defined in the regulations themselves. That is presently not the case in proposed Part 76.

Therefore, in Enclosure B, USEC is proposing the addition of a new section 76.36 to achieve this objective. The proposed section addresses both the timing and content of the annual resubmittals.

25. Section 76.37 Federal Register Notice

This section would require publication of a notice of filing of the application in the Federal Register. USEC agrees with this section.

26. Section 76.39 Public Meeting

This section would provide for public meetings to be conducted by the Director of Nuclear Materials Safety and Safeguards (Director) when the Director determines it to be in the public interest. USEC agrees with this section

27. Section 76.41 Record Underlying Decisions

This section would require that decisions on an application for a certificate be based on information in the record and facts officially noticed. USEC agrees with this section.

28. Section 76.43 Annual Date for Decision

This section would require the Director to render a decision on an application within 6 months of receipt of the application unless the date for decision is altered and notice is published in the Federal Register. USEC agrees with this section.

29. Section 76.45 Application for Amendment of Certificate

This section permits the Corporation to apply for amendments to the certificate to cover proposed new or modified activities. It also requires the Director to determine whether the proposed activities are "significant" and if so to publish notice of the requested amendment and provide opportunity for public comment in a public meeting.

USEC agrees with the proposed amendment procedure so long as the Director retains the discretion to issue the requested amendment before publication of the notice and conduct of the public meeting, in order to accommodate changes for which expeditious action is necessary. USEC assumes that in deciding which amendments are "significant", the Director will follow the practice generally used for determining which materials licensee amendment requests to publish in the Federal Register.

30. Section 76.51 Conditions of Certification

This section would require USEC to comply with all applicable regulations and requirements set forth in the certificate and approved compliance plan. USEC generally agrees with this requirement.

However, this section departs from the comparable provision in 10 CFR Part 70 (10 CFR § 70.32 "Conditions of Licenses") in one important respect. Section 70.32 permits a Part 70 licensee to modify its programs for MC&A, physical protection, protection of special nuclear material in transit, security, safeguards and emergency response so long as the changes "do not decrease the effectiveness" of the applicable plans. This option is absent from proposed section 76.51.

USEC strongly believes that it is important to provide it with the same flexibility afforded existing fuel cycle licensees in this regard, and we proposed a provision to achieve that objective in our July 15, 1993 letter (USEC's proposed section 76.32). In

Enclosure B, we again have proposed modifications to section 76.51 to achieve that objective. The proposed section is consistent with section 70.32, but has been streamlined to be more concise.

31. Section 76.53 Consultation with Environmental Protection Agency

This section would require the Director to consult with the EPA and solicit its written comments in connection with the Director's review of USEC's application for a certificate of compliance. USEC agrees with this section.

32. Section 76.55 Timely Renewal

USEC strongly concurs with the need to establish a "timely renewal" provision consistent with the practice for NRC materials licensees that will prevent the expiration of an existing certificate of compliance or approved compliance plan pending an NRC decision on a subsequent annual application. Section 76.55, however, is inconsistent with the comparable provision in Part 70 in two important respects.

First, while Section 70.33 states that a license does not expire until an application for renewal has been "finally determined by the Commission," proposed Section 76.55 would permit the certificate to expire upon the Director's "determination" -- before the NRC has made a final decision. A Director's decision to deny a certificate or not to approve a compliance plan may be the subject of a petition for review. The section should be modified

to clarify that the certificate does not expire until the application has been "finally determined by the Commission."

Second, the proposed rule would explicitly require a "sufficient" application as a condition of timely renewal. This approach, as well, is not consistent with the provisions of 10 CFR Part 70 applied to fuel cycle licensees. Section 70.33 does not require a "sufficient" application, but instead simply an application "in proper form". We assume that the NRC's intention is to impose the same requirement upon USEC as it imposes on its materials licensees. The use of different terminology is confusing. We suggest that the term "sufficient" be deleted from section 76.55 and that the phrase "in proper form" be inserted.

33. Section 76.60 Regulatory Requirements Which Apply

This section describes the proposed requirements for certification of the Corporation's operation of the GDPs and specifically incorporates into Part 76 the applicable provisions of Parts 19, 20, 21, 26, 71, 70, 73 and 74. In particular, it states that the Corporation "shall demonstrate" compliance with various provisions of the NRC's regulations. 59 Fed. Reg. 6806. It is not clear what is intended by this phrase and whether it imposes some particular affirmative obligation on the Corporation not otherwise described in proposed Part 76.

USEC intends to fully comply with the applicable regulations. We will submit an annual application to the NRC for a certificate of compliance and will make our facilities and

personnel available for NRC compliance evaluations and inspections. It is our understanding that this is what was intended by the Commission. The language of the regulation, however, should be clarified. USEC recommends that this section be modified to state that the Corporation "shall comply" with the applicable regulatory requirements.

In addition, throughout our comments, USEC has requested certain minor modifications to the provisions of Parts 19, 20, 21 and other portions of the NRC regulations (including Part 95 which is not presently listed in proposed section 76.60) primarily to assure clarity in the transition from DOE oversight to NRC oversight. Because these portions of the NRC regulations are generally applicable to a wide range of NRC licensees, proposed section 76.60 (applicable only to the GDPs) is the most appropriate vehicle for identifying those changes to the regulations as applied to the Corporation. Therefore, in Enclosure B, USEC has proposed changes to section 76.60 to specify those few particular areas where requirements applicable to USEC should depart from the requirements generally applicable to NRC licensees.

34. Section 76.62 Issuance of Certificate or Approval of Compliance Plan

This section sets forth the procedures for issuance of a certificate and for approval of a compliance plan. Our comments are provided below.

Written Decision - Section 76.62(a)

This section would require the Director to issue a written decision upon a finding of compliance with applicable regulations "or" upon approval of a compliance plan. 59 Fed. Reg. 6806. By using the term "or", we are concerned that the regulation might be interpreted to require the Director to withhold the certificate of compliance in its entirety if there are any outstanding areas of noncompliance.

USEC anticipates that it will be in compliance with most of the applicable NRC requirements when it submits its application, but that a compliance plan may be necessary to address those few remaining areas where, as of the time of USEC's application, it is not in full compliance with particular NRC regulations. Under these circumstances the NRC should not decline to issue the certificate based upon a finding that some areas of noncompliance exist, so long as the compliance plan is determined to be acceptable.

Instead, USEC suggests that the regulation be modified to clarify that the certificate of compliance may be issued and made explicitly subject to the condition that USEC carry out and adhere to the approved compliance plan. The Energy Policy Act states that continued GDP operation may be based upon a certificate of compliance "or" an approved compliance plan. However, nothing in the Act suggests that the certificate and compliance plan are mutually exclusive, and there is no reason to interpret that

statutory language so literally that it would preclude the NRC from proceeding in the manner recommended by USEC.

Indeed, were the NRC not to issue the certificate at the time it approves the compliance plan, certain undesirable ambiguities in the regulatory structure would be created. While GDP operations could clearly continue, NRC will have made no findings with respect to those areas not covered by the compliance plan -- i.e., those areas where USEC is in compliance with applicable requirements. Instead, it simply will have approved a plan for addressing those areas where compliance has not yet been achieved. Under these circumstances, there would be no explicit mechanism to make clear that USEC has demonstrated compliance with most of the NRC requirements.

USEC's recommendation is consistent with NRC practice involving its fuel cycle licensees. The NRC has issued renewals of license applications (which are analogous to the certificate of compliance) containing license conditions requiring the licensee to undertake or complete certain programs or activities after issuance of the license renewal. Conditions requiring adherence to the approved compliance plan would be no different.

Therefore, section 76.62(a) should be modified to clearly provide for the Director to have the authority to both issue the certificate covering those areas where USEC is in compliance, and approve the compliance plan in order to address any noncompliances that may remain.

Federal Register Publication - Section 76.62(b)

This section would require publication of notice of the decision in the Federal Register. USEC agrees with this section.

Petitions for Review - Section 76.62(c)

This section would permit "any person whose interest may be affected who submitted written comments . . . on the application or compliance plan . . . or who provided oral comments at any meeting held on the application or compliance plan . . ." to file a petition for review. 59 Fed. Reg. 6806. Unlike section 76.64(d) governing petitions for review of a denial of a certificate application, this section does not explicitly require that a person be adversely affected "and" that such person submit written or oral comments in order to petition for review. The word "and" should be inserted in the section. Furthermore, we also recommend that persons be entitled to petition for review only with respect to those matters specifically raised in their written or oral comments.

In addition, under section 76.62(c), USEC could be faced with multiple petitions and required to respond to all such petitions within 10 days. This 10 day requirement could be extremely burdensome and prejudicial to the Corporation. Therefore, the time period for response should be extended to at least 30 days.

Commission Action - Section 76.62(d)

This section would permit the Commission to adopt, modify or set aside the Director's decision. USEC agrees with this section.

35. Section 76.64 - Denial of Certificate or Compliance Plan

This section sets forth the procedures for denial of an application for a certificate and for disapproval of a compliance plan. Our comments are provided below.

Written Finding - Section 76.64(a)

This section provides that the Director may deny an application for a certificate of compliance or may not approve a compliance plan upon a written finding that the application is in noncompliance with NRC requirements or that the compliance plan is inadequate to protect public health and safety or the common defense and security. USEC agrees with this section.

Federal Register Publication - Section 76.64(b)

This section would require publication of the decision in the Federal Register. USEC agrees with this section.

Pre-Denial Procedures - Section 76.64(c)

This section would require the Director to advise USEC in writing and afford USEC the opportunity to submit a proposed compliance plan to address areas of noncompliance before denying the application for a certificate. USEC concurs and believes that it must receive such notice and be afforded the opportunity to address identified noncompliances prior to a decision to deny an

application. We recommend that the rule be clarified to confirm that even if USEC has previously submitted a compliance plan, it will be afforded an opportunity to submit a new or revised plan after receiving the Director's written notice.

Petitions for Review - Section 76.64(d)

This section would permit the Corporation and any person whose interest may be affected and who submitted written or oral comments on the application compliance plan to petition for review of the Director's decision denying the application within 15 days of the decision. It also provides that the Director's decision becomes effective and final 60 days after publication of the Federal Register notice unless the Commission grants the petition or otherwise acts.

The GDPs supply 40 percent of the world market and 90 percent of the domestic market for enriched uranium and are presently the sole domestic source of enrichment services. In light of the significant impact that a denial could have on the Corporation and the potential national and public policy implications of a denial, we believe that a Director's decision denying an application should be subject to automatic Commission review if the Corporation petitions for such review, that the Corporation be afforded at least 30 days to file such a petition, and that a Commission denial not become effective until at least 10 days after the date of decision.

36. Section 76.65 - Inalienability of Certificates

Proposed Part 76 does not presently contain a section addressing the inalienability of certificates. USEC has proposed adding a new section 76.65 (similar to 10 CFR § 70.36) that requires NRC consent for transfers of ownership or control in accordance with the AEA and established practice with NRC licensees.

37. Section 76.66 - Expiration and Termination of Certificates

Proposed Part 76 does not presently contain a section addressing the expiration and termination of certificates. USEC has proposed adding a new section 76.66 (similar to 10 CFR § 70.38). If the Corporation does not submit an annual renewal application, under new section 76.66, before the expiration date of its certificate it must terminate operations. The applicable "Turnover Requirements" in the DOE/USEC Lease will then govern USEC's turnover of the GDPs to DOE for D&D.

38. Section 76.68 - Plant Changes

This section would establish a procedure by which USEC may make changes in the plants or plant operations without Commission approval. USEC strongly endorses the need for a procedure to permit such changes. However, the section as written is overly restrictive, would substantially impede USEC's ability to make even minor changes unrelated to the safety of operations, would impose requirements that are more stringent than those imposed upon reactor licensees under Part 50, and does not

correspond to USEC's view of the appropriate form and content of the application for a certificate, as discussed under proposed section 76.35. USEC strongly encourages the NRC to revise this provision along the lines discussed below. USEC's proposed revision is modelled on section 50.59 and tailored to the type of analytical information available to support the Safety Demonstration to be included in the certificate application.

Proposed section 76.68, as written, would require USEC to conduct a written safety analysis for any "changes to the plant or to the plant's operations ..." regardless of the significance or relationship to safety of the change. 59 Fed. Reg. 6807. Unlike 10 CFR § 50.59, which only requires a licensee to evaluate changes in the facility or procedures "as described in the safety analysis report ...", section 76.68 appears to require such analyses (without limitations) for even the most insignificant modifications -- creating an enormous implementation burden with no safety benefit. As recommended in Enclosure B, the regulation should be rewritten, consistent with section 50.59, to require written safety evaluations only for changes in the plant or its operations "as described in the Safety Demonstration portion" of the application.

Furthermore, while section 50.59 requires reactor licensees to obtain prior NRC approval only for those changes which involve technical specification modifications or an "unreviewed safety question", proposed section 76.68 imposes a number of very significant additional conditions that would impose additional

burdens without any demonstrable safety benefit. As written, prior Commission approval of changes would be required if:

- USEC determines that there is an "undue risk to public health and safety, the common defense and security, or to the environment"; or
- the changes are not authorized by responsible management or approved by a plant review committee; or
- the changes would decrease the effectiveness of the plant's safety, safeguards and security programs; or
- the changes would cause projections of occupational exposures to increase significantly; or
- the changes would significantly affect the types of or increase offsite effluent releases; or
- the changes involve an unreviewed safety question.

Clearly, this provision goes well beyond section 50.59, creates a series of very subjective new criteria which would necessitate prior Commission approval of plant changes, and imposes a very substantial burden on USEC. It should be rewritten to provide the flexibility it was intended to provide and to correspond to the application to be submitted to the NRC. USEC should be authorized to undertake changes in the GDP facilities or operations as described in the Safety Demonstration portion of the application, "unless the proposed change involves a change in the

certificate conditions or Operational Safety Requirements" set forth in Part I of the application or involves an "unreviewed safety question". If rewritten in this manner, the NRC will have an effective mechanism for satisfying itself that plant changes are properly controlled, while at the same time, giving USEC essential operational flexibility.

USEC also recommends certain modifications to the 10 CFR § 50.59 definition of "unreviewed safety question" to conform that definition to the analytical information available at the GDPs that differs from that at commercial reactors. Safety systems at the GDPs are essentially equivalent to the section 50.59 "systems important to safety" concept. They have been defined on the basis of their function and their role in accident scenarios. These systems and equipment are the subject of Operational Safety Requirements and receive special attention within programs such as QA, training, maintenance, etc. These systems and equipment, although designed to specific design criteria, were not designed with clearly identified margins of safety as is typically done in nuclear reactors. Therefore, "margin of safety" is not as meaningful a term in the GDP operation and has not been used extensively in the bases for Operational Safety Requirements.

We therefore recommend that the definition of "unreviewed safety question" be revised as follows:

> A proposed change shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or

> the malfunction of equipment subject to Operational Safety Requirements previously evaluated in the Safety Demonstration may be increased; or (ii) if a possibility for an accident or malfunction of a different type with equivalent or higher potential consequences than any evaluated in the Safety Demonstration may be created.

Finally, while section 50.59 requires reactor licensees to submit a report and summary of its safety evaluations annually, proposed section 76.68 would require USEC to submit revised pages to the application and safety analysis report within 90 days of their adoption. This portion of the regulation should be rewritten to generally conform to section 50.59 as well, by providing for the submittal of an annual summary of USEC's safety evaluations.

39. Section 76.70 - Post Issuance

This section provides the criteria and procedures to be used by the NRC for the revocation, suspension or amendment (other than upon the request of USEC) of the certificate or approved compliance plan. We generally agree with the provision. However, subsection 76.70(c)(2) could be interpreted to establish public participation rights that go beyond those applicable to similar enforcement proceedings for NRC licensees. In particular, it states that both the Corporation "and other interested persons" will be provided with an "opportunity to provide written views to the Commission" on a proposed amendment, revocation or suspension of a certificate or compliance plan and that those views "shall" be considered by the Commission. 59 Fed. Reg. 6807. The analogous provision in 10 CFR § 2.202 affords only the licensee or other

persons "adversely affected" the opportunity to request a hearing on an enforcement action.

Under applicable NRC and judicial precedents, persons seeking to require a more stringent enforcement action than is being proposed by the NRC are not entitled to participate as a party to an enforcement proceeding. Under Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983), those who oppose an NRC enforcement action may participate in an enforcement proceeding. Public participation is precluded in situations where the Commission proposes to take an enforcement action to require "additional or better safety measures." Id. Intervention must therefore be denied to those who seek the imposition of a stricter penalty than what the Commission seeks through the enforcement action.[3/] Therefore, section 76.70 should be modified to coincide with existing precedent and to permit only persons whose interests may be "adversely affected" by the proposed enforcement action to participate in the proceeding.

40. Section 76.72 Miscellaneous Procedural Matters

This section would address a number of procedural matters related to petitions for review, ex parte communications, civil penalties and section 2.206 petitions. In Enclosure B, USEC is proposing a change to section 76.72(d) to correct an apparent

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3/ See, e.g., Sequoyah Fuels Corp. (UF_6 Production Facility), CLI-86-19, 24 NRC 508 (1986); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980).

typographical error in order to clarify that civil penalty proceedings will utilize the procedures set forth in 10 CFR § 2.205 ("Civil Penalties") and in 10 CFR Part 2, Subpart G. USEC has no other comments on this section.

41. Section 76.76 Backfitting

This section would establish a backfitting procedure similar to that established for Part 50 licensees. Commissioner Rogers has requested specific comments on both the timing of the backfit protection and the applicable criteria to be applied. 59 Fed. Reg. 6797-98.

With respect to timing, USEC strongly believes that section 76.76 should become effective as proposed by NRC. Thus, the rule should apply to any plant changes necessitated by NRC regulations or interpretations after Part 76 becomes final. Section 76.76 (which closely follows 10 CFR § 50.109) is a "fact-neutral" rule that establishes objective criteria that can be applied to any given circumstances regardless of the particular nature of the regulated party or its activities or facilities.[4/] While the NRC has not previously regulated a gaseous diffusion

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4/ USEC agrees with Commissioner Remick's observation that "[t]here is nothing specific to power plants about the notions that we should impose backfits necessary for adequate protection without consideration for cost, that increases beyond adequate protection should be non-trivial and cost-effective, and that we should consider the impact of the backfit on occupational exposure, plant complexity, and our resources." Commissioner Remick, Vote Sheet on SECY 93-285 at p.2.

plant, it has extensive experience with fuel cycle facilities (such as uranium conversion plants and fuel fabrication plants) which pose very comparable radiological hazards and which employ the same radioactive materials.

Commissioner Rogers has suggested that the NRC might delay the effectiveness of section 76.76 so that USEC and the Commission may gain new knowledge in an interim period which could suggest changes worthwhile from the standpoint of public health and safety. He also suggests that possible changes to 10 CFR Part 70 which could have safety implications for Part 76 may justify delaying the effectiveness of section 76.76. 59 Fed. Reg. 6798.

Section 76.76(a)(4)(ii), however, permits the Commission to impose new requirements whenever "regulatory action is necessary to assure that the plant provides adequate protection." 59 Fed. Reg. 6808. This provision assures that the Commission will not be obstructed by cost considerations where the level of protection afforded by the existing regulations is determined to be insufficient. Under section 76.76(a)(4)(iii), the NRC need not demonstrate a "substantial increase" in public health and safety when it determines that regulatory action is necessary to define or redefine the level of protection regarded as adequate.

With respect to the criteria for backfitting, USEC believes that the "substantial increase" standard contained in section 50.109 and the proposed rule is appropriate. In adopting that standard for power reactor backfitting in 1985, the Commission

stated that it was not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security improvements having costs that are justified in view of the increased protection that would be provided. 50 Fed. Reg. 38,102 (1985). USEC believes that the "substantial increase" standard will encourage the promulgation of more cost-effective regulations and prevent backfits which result in an insignificant benefit to the public health and safety.

Furthermore, circumstances specific to the GDPs make it particularly important that safety improvements, over and above the adequate protection standard, be very carefully justified on the basis of a rigorous cost/benefit analysis. The GDPs have operated for almost 40 years under a very different regulatory scheme and with a good record of safety. Congress has tasked USEC both with complying with applicable requirements established to assure continued safe operation, and with operating these existing facilities in a profitable and efficient manner. Application of the backfit rule, as written, provides an effective mechanism for the NRC to assure that its regulatory activities do not jeopardize those goals without hindering the NRC's implementation of its statutory responsibilities.

Commissioner Rogers has suggested that the standard set forth in Executive Order 12866 might be substituted for the "substantial increase" standard in the proposed regulation. Executive Order 12866 directs agencies to adopt regulations "only

upon a reasoned determination that the benefits of the intended regulation justify its costs". Exec. Order No. 12,866, § 1(b)(6). 58 Fed. Reg. 51,735 (1993). In 1985, when the Commission adopted the "substantial increase" standard for power reactors, it chose not to adopt a similar proposal offered by Commissioner Asselstine -- under which a backfit would be required upon a determination that a proposed measure provided a net increase in the protection of the public health and safety and that the costs of the improvement were not incommensurate with the increased protection. 50 Fed. Reg. 38,108 (1985).

Furthermore, Executive Order 12866 directs agencies to design their regulations in the most cost-effective manner in order to achieve their regulatory objectives, without imposing unacceptable or unreasonable costs on society. The "substantial increase" standard is consistent with this directive. Section 1(b)(6) of the Executive Order appears to merely impose a minimum level of analysis that must be performed by an agency, and does not discourage an agency from applying a higher standard. In other words, this section seems to direct agencies, <u>at a minimum</u>, to conduct a cost-benefit analysis before promulgating regulations.

In addition, adopting the less stringent section 1(b)(6) standard for the GDPs would create an inconsistency with section 50.109. There is no apparent reason for treating power reactors and the GDPs differently with respect to backfitting.

42. Section 76.81 Authorized Use of Radioactive Material

This section would provide that the certificate or approved compliance plan will entitle the Corporation to "receive title to, own, acquire, receive, possess, and use "radioactive material in accordance with the certificate." 59 Fed. Reg. 6803. USEC recommends that this section be revised so that the certificate or compliance plan authorizes USEC to use "source, special nuclear material and byproduct material" (rather than "radioactive material") in order to coincide with the AEA definitions and other NRC regulations.

In addition, the first sentence of this section states that "[t]he corporation shall confine its possession and use of radioactive material to the locations and purposes covered by the certificate or approved compliance plan." Id. USEC recommends deleting this sentence. USEC may possess or use radioactive material in locations or for purposes not covered by the certificate provided such possession and use is otherwise authorized by law. An example would be the receipt of possession of LEU in Russia as a result of Russian downblending of HEU.

43. Section 76.83 Transfer of Radioactive Material

This section would define the parties to which the Corporation may transfer radioactive material and the methods acceptable to the NRC for the Corporation to verify that the transferee is authorized to receive such material. USEC agrees

with this section but has proposed one minor change to address an apparent typographical error.

44. Section 76.85 Assessment of Accidents

This section calls for the Corporation to perform accident analyses in order to establish the basis for limiting conditions of operations which are a component of the proposed technical safety requirements. The proposed regulation calls for the analysis to examine realistic scenarios for a reasonable spectrum of postulated accidents. The spectrum is to include both internally and externally initiated events -- the latter including natural phenomena. The wording of the regulation and of the Statements related to section 76.85 accompanying the rule indicate that the NRC Staff will also use the results of the analyses to determine if there is adequate protection of public health and safety.

USEC supports the preparation of a realistic accident analysis for a reasonable spectrum of accidents, as well as the use of such an analysis to identify appropriate operating limits or controls. However, we are concerned about the proposed use of these results in conjunction with a numerical limit to determine the adequacy of the level of protection of public health and safety.

Use of numerical limits for judging the ability of an operating plant to protect the public under accident conditions is a significant departure from past NRC practice. While the

Statements accompanying the proposed rule identify 10 CFR Part 100 as the source of the proposed 25 rem operational safety objective, the proposed use of the numerical limit is very different from Part 100. Part 100 requires a licensee to use the 25 rem limit in conjunction with a prescriptive procedure identified in NRC Regulatory Guides in order to determine a distance to an exclusion area boundary (an area in which the licensee must be able to exercise control including removal of people if necessary) as well as a distance to a low population zone. This is very different from determining the acceptability of an existing plant and its operating practices. In fact, footnote 2 to 10 CFR § 100.11 (the section which identifies the a 25 rem dose as being based on accidental occupational considerations) specifically states that the use of the 25 rem value is not "intended to imply . . . acceptable limits for emergency doses to the public under accident conditions." USEC believes that use of a 25 rem dose or a derived soluble uranium intake limit as a basis for determining adequacy of public protection would be contrary to the position the Commission has expressed in Part 100.

Other instances of which we are aware in which the NRC uses numerical limits (10 CFR § 40.31(j)(1)(i) and 10 CFR § 70.22(i)(1)(i)) call for either an emergency plan or an accident analysis which demonstrates that the maximum dose to a member of the public is less than 1 rem effective dose equivalent or that the maximum intake of soluble uranium is less than 2 milligrams.

Again, these numerical limits are not used to assess the adequacy of plant design or operation.

USEC believes that the use of numerical limits, even if they are called objectives, is beyond current regulatory practice for both reactors and fuel cycle facilities. Furthermore, we are unaware of any limits or standards applied to accident analysis results in any other similar regulations, including OSHA's rules for process safety management (29 CFR § 1910.119) or EPA's proposed standards for risk management programs for chemical accidental releases (40 CFR Part 68). Therefore, neither the rule nor its accompanying Statements should state or imply that specific numerical limits will be used in evaluating the level of public protection provided by the design of the GDPs or USEC proposed management methods.

USEC is also proposing some modifications to the language in this section and that the amended language be incorporated into section 76.35.

45. Section 76.87 Technical Safety Requirements

In the Statements which accompany the proposed rule, the NRC states that technical safety requirements (TSR) must be included in the application and that the safety topics to be considered are those mainly associated with the plant operations, management controls, and confinement of radioactive materials. 59 Fed. Reg. 6795. The NRC further states that the requirements are similar to operating technical specifications or license conditions

applied to nuclear fuel cycle plants. 57 Fed. Reg. 6795. However, as written, section 76.87 goes far beyond the "license conditions" language of 10 CFR Part 70. In fact the specificity of the various terms used in section 76.87 appears to be taken directly from 10 CFR § 50.37.

The GDPs have historically operated under OSRs which are similar to the TSRs prescribed in proposed section 76.87 and USEC expects to continue this practice when certified. The existing OSRs address control of process parameters, safety limits, design features, surveillance requirements, administrative controls and other controls which section 76.87 prescribes, but utilize different language. Use of the currently proposed language of section 76.87 could create unnecessary confusion.

The proposed language also identifies topics that "shall be" considered in preparing TSRs. This list of fourteen topics is more appropriate when identifying accidents for analysis.

Therefore, USEC recommends that this section be retitled "Operational Safety Requirements" in order to minimize the potential for confusion among plant operating personnel, and that the requirements be simplified to require USEC to identify OSRs, identify the action to be taken if the OSR is violated, report the violation to NRC, review the violation and any corrective action, and retain records of violations. USEC also recommends that the list of fourteen topics to be considered for safety requirements be deleted from section 76.87.

46. Section 76.89 Criticality Accident Requirements

Proposed section 76.89 is more restrictive than the standard language contained in 10 CFR § 70.24 which the Staff cites as the reference standard in the draft Regulatory Analysis. Section 70.24 contains threshold amounts of uranium (700 grams of U^{235}, 1500 grams U^{235} if the enrichment is less than 4%) and only requires licensees which are authorized to possess more than these limits to have nuclear criticality alarms. NRC Regulatory Guide 8.12 states that ANSI/ANS-8.3-1986 is generally acceptable to the NRC Staff except for the statement that areas above these mass thresholds should be evaluated for criticality alarm needs. The NRC Staff position is that areas above these mass limits require alarms unless a specific exemption is approved by the NRC. If section 76.89 is not modified, the GDPs will have to procure additional nuclear criticality detector clusters and becons, build housings for the clusters, and provide electrical power. The estimated cost of these upgrades is $2-3 million for Portsmouth and $5-9 million for Paducah.

USEC believes that section 76.89 should specifically state that individual areas containing less than 700 grams U^{235} or less than 1500 grams U^{235} (where the maximum enrichment is 4 weight percent) do not require nuclear criticality alarms. This change would make section 76.89 consistent with the practice under section 70.24.

USEC also requests a threshold similar to the 1,500 gram - 4% enriched threshold but for 5% enriched material. Based on the information in ANSI/ANS-8.1-1983, USEC requests an exemption for areas where there is less than 1,400 grams of U^{235} where the maximum enrichment is less than 5 weight percent.

In addition, section 76.89 does not presently address those storage and processing areas within the very large GDP facilities which do not require nuclear criticality alarms. There are many areas where fissile material is handled and stored in transportation containers without alarms. There are also process buildings where the enrichment is below, at, or slightly above natural uranium which are not alarmed and which USEC also does not believe require monitoring.

It would be very useful if there were thresholds that identified when individual, isolated storage areas actually require nuclear criticality alarms. USEC requests that section 76.89 authorize unalarmed storage of special nuclear material if packaged in approved storage containers and in isolated arrays identified in the container approval standards of 10 CFR Part 71.

The Criticality Handbook (ARH-600) states that the minimum critical enrichment for a homogeneous solution is 1.034%. USEC requests that process buildings which contain homogeneous material enriched to less than 1% be exempted from nuclear criticality alarm requirements.

47. Section 76.91 Emergency Planning

Section 76.91 would require the Corporation to establish, maintain and prepare to follow a written emergency plan as well as submit the plan as part of the application for certification. Section 76.91 also identifies the information to be included in the emergency plan. The proposed requirements essentially parallel those in 10 CFR § 70.22(i), however, the NRC has omitted the word "brief" when referring to the various descriptions required -- such as the descriptions of the plant, methods, responsibilities, etc.

USEC believes that the emergency planning requirements should be stated in the same terms as section 70.22(i) to the maximum extent possible. NRC Stacements on the proposed rule and Draft Regulatory Analysis do not suggest any need for additional emergency planning requirements. In fact, the Supplement to the Draft Regulatory Analysis specifically states that the NRC Staff considers the existing emergency planning regulations to be adequate. Staff Supplement at p. 9. Therefore, USEC proposes changes to section 76.91 that are intended to conform the language more closely to section 70.22(i).

48. Section 76.93 Quality Assurance

This section would require the USEC to establish, maintain, and execute a quality assurance program which satisfies the applicable criteria of ASME NQA-1 graded to the extent it is commensurate with the importance to safety. In its review of the prior draft of Part 76, the Commission expressed "concern over

adoption of the 10 CFR Part 50, Appendix B quality assurance criteria because of the potential implementation problems" and specifically directed the Staff to "consider the possibility of allowing the corporation to submit a QA program based on NQA-1."[5/]

USEC agrees that the rule should contain appropriate QA requirements. We believe that the reference to NQA-1 in lieu of 10 CFR Part 50 Appendix B is an important and positive change, and that reference to reactor QA criteria is inappropriate and unnecessary. However, USEC is concerned that NQA-1 may create implementation problems similar to those associated with the Part 50 Appendix B criteria.

The NRC's Statements recognize that the GDPs are similar to licensed fuel cycle facilities, that an appropriate QA program for the GDPs is not the same as for reactors, and that the GDPs were designed and constructed over 40 years ago. 59 Fed. Reg. 6795. NQA-1 has not been imposed on current fuel cycle licensees and USEC is unaware of any fuel cycle safety (versus product) QA program built around NQA-1.

While NQA-1 is a widely recognized standard, over the past 40 years the GDPs have operated safely with a management system that is not based on NQA-1. For example, recognizing the importance to

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5/ Staff Requirements Memorandum (SRM) for SECY-93-285-Proposed Rulemaking - New Part 76, "Certification of Gaseous Diffusion Plants" and SECY-93-285A-Supplemental Information on Proposed Part 76, "Certification of Gaseous Diffusion Plants", p. 2, January 7, 1994.

safety of assuring the integrity of cylinders that contain UF_6, the requirements for cylinders have been documented in ORO-651 "Uranium Hexafluoride: A Manual of Good Handling Practices." These cylinder integrity requirements have been widely used throughout the fuel cycle industry. We believe that this management system assures adequate operational safety for cylinders and that USEC should be permitted to propose such alternative criteria, as appropriate, in its QA plan.

Similarly, while NQA-1 requires certain features of a management system that may readily apply to operating fuel cycle plants (including conduct of safety-related functions by procedure, control of changes to the plant, performance of inspections, identification and correction of non-conformances, identification and completion of corrective actions, and performance of audits), it also contains certain features that would be inappropriate and extremely burdensome to apply to existing facilities (including design validation, flowdown of QA program to vendors, and quality records). While the proposed rule provides for the "graded" application of applicable NQA-1 criteria, USEC believes that additional specificity is desirable. We understand that the fuel cycle industry shares this concern in connection with the NRC's pending proposed revisions to 10 CFR Part 70. Therefore, USEC intends to work with the fuel cycle industry QA working group to develop the specifics of a QA program that should apply to existing, licensed fuel cycle facilities, as well as to the GDPs.

The industry intends to propose this standard in support of the proposed revision to Part 70, planned for August 1994.

Lacking a more definitive alternative at present, USEC believes that if NQA-1 is properly interpreted with due regard for the circumstances applicable to the GDPs, it generally can serve as an appropriate framework for NRC evaluation of USEC's QA program in the certification process. To achieve this objective, it is essential that the "graded" approach authorized by the proposed rule be retained. This will enable the GDPs to tailor the scope and depth of their QA programs to plant facilities, procedures and practices commensurate with their importance to safety.

Second, USEC must be able to incorporate only those NQA-1 QA controls that are reasonable and appropriate for application to an operating facility. We interpret the proposed rule to permit this through the reference to "applicable" QA criteria of NQA-1.

Finally, it is essential that the rule permit USEC to submit alternative approaches for implementing its QA program based on prior experience and past effective practices at the GDPs that may be different than NQA-1, but which provide for adequate assurance of quality. Therefore, we are proposing certain changes to section 76.93 to clarify that reasonable alternatives to NQA-1 may be considered.

49. Section 76.95 Training

This section would require that the Corporation establish and implement a training program based upon a "systems approach to training" including: conduct of job-task analyses; development of learning objectives; use of learning objectives for training design; evaluation of trainee mastery during training; and evaluation and revision of training based on performance in the job setting. This section closely parallels the 10 CFR Part 50 training rule which adopted the Institute of Nuclear Power Operations (INPO)-approved training methodologies for commercial power reactor licensees. As such, it goes well beyond both the existing requirements of 10 CFR Part 70 and current practices at the GDPs.

In the Commission's January 7, 1994 Staff Requirements Memorandum (SRM) on the proposed rule, the Commissioners unanimously agreed that the proposed rule "should include requirements that personnel be appropriately trained and qualified to perform their nuclear safety-related functions." SRM at p. 3. USEC agrees. The SRM also suggests that "[c]ertain features of 10 CFR Section 50.120 could serve as reference material for the staff as it drafts these requirements." Id. The proposed rule, however, appears to adopt the full "performance-based" training concept embodied in Part 50.

Efforts have been underway to establish a performance-based training program at the GDPs covering specific job tasks

within a number of key work classifications. However, we do not believe that imposing INPO-type training as a requirement in the rule is necessary to assure nuclear safety, safeguards or security. Furthermore, it would subject USEC to the very costly and difficult task of fully implementing a performance-based training program by the time that it submits its initial application for a certificate. Extensive work would be required to review job tasks, develop learning objectives, revise procedures and train personnel in a very short time. Development and implementation of a "systems approach to training" for only those selected tasks affecting nuclear safety or radiological controls is estimated to cost about $8 million.

Therefore, USEC strongly recommends that the performance-based training concept be deleted from the proposed rule. Instead, we recommend that the regulation require USEC to "establish, implement and maintain a training program to assure that personnel are adequately trained to perform their nuclear-safety related functions."

50. Section 76.111 Physical Security, Material Control and Accounting, and Protection of Certain Information

This section would provide that the NRC regulations governing physical security, MC&A, and protection of Restricted Data, National Security Information, Safeguards Information, and Uncontrolled Classified Nuclear Information that would apply to USEC are referenced in Part 76. USEC agrees with this section.

51. Section 76.113 Formula Quantities of Strategic Special Nuclear Material - Category I

This section would apply the appropriate requirements of Parts 70, 73 and 74 to the Corporation. USEC agrees with this section. The Corporation does not plan to possess Category I special nuclear material.

52. Section 76.115 Special Nuclear Material of Moderate Strategic Significance - Category II

This section would apply the appropriate requirements of Parts 70, 73 and 74 to the Corporation. USEC agrees with this section. The Corporation does not plan to possess Category II special nuclear material.

53. Section 76.117 Special Nuclear Material of Low Strategic Significance - Category III

This section identifies the requirements for MC&A and physical security for material of low strategic significance. The section identifies specific sections of 10 CFR Parts 70, 73, and 74. There are several sections that could be interpreted in such a manner as to require changes in plant operations that would increase cost without producing a significant safety benefit.

Section 70.51(d) calls for a physical inventory at intervals not to exceed twelve months. Section 74.33 calls for the performance of a static physical inventory of all other uranium outside of the enrichment processing equipment at least every 370 calendar days. USEC recommends that section 76.117 be modified to specifically state that inventories of uranium outside of the

enrichment processing equipment conducted at least every 370 days meet the requirements of section 70.51(d).

Sections 74.15(b)(2) and 74.33(c)(2) establish requirements for material control and accounting programs. NRC personnel have noted during site visits that normal practice at fuel cycle facilities is to perform Non-Destructive Assay (NDA) measurements on all containers that are received on site. This is practical for fuel fabrication plants where the average processing rate is about one cylinder per day. This is less practical at the GDPs where each plant will receive ten or more cylinders per day.

The GDPs have historically weighed each container, and for routine flows (e.g. natural UF_6 feed material), have used statistical sampling techniques to validate shippers' purities and enrichments. This approach has provided very high assurance of accurate data. Additional requirements for performing NDA measurements on each container would not provide any significant benefits and would be an unnecessary added cost.

We recommend that section 76.117 be modified to specifically state that statistical sampling can be used for material control and accounting programs required by sections 74.15(b)(2) and 74.33(c)(2). If statistical measuring programs that are currently part of the MC&A program were to be abandoned and 100 % measurement implemented, additional cylinder handling would be required as well as NDA equipment and technicians

to operate the equipment. We estimate initial costs of $50,000 at each plant and an annual cost of about $100,000 at each plant.

Section 74.33(c)(4)(i) allows for the performance of a dynamic (non-shutdown) physical inventory of in-process (e.g. in the enrichment equipment) uranium and U^{235} at least every 65 days. Although the GDPs were designed to reduce the potential for uranium deposits and to minimize the formation of solid accumulations and return the deposits to the gas phase, the GDPs are subject to transient accumulations. Such accumulations are dispersed throughout the process equipment and have a weak radiation signature that is indistinguishable from that of the in-process gas, making determination of non-gaseous inventories almost impossible. Because of the large number of equipment items in the GDPs, and the sophisticated equipment required to measure accumulations, there is no realistic way to measure non-gaseous, in-process accumulations.

In-process inventories at the GDPs performed today rely on material in the gaseous phase. The quantity of solid SNM held up in cascade equipment is very small relative to the inventory difference of the gas phase of the cascade. If measurement of the solid phase accumulations were required, there would be very significant equipment and manpower costs required to make the measurements in a practical inventory period. Equipment costs alone are expected to involve several tens of millions of dollars and the information received from such measurements would be of

very limited value in making an overall inventory estimate. Therefore, we recommend that section 76.117 be modified to specifically state that dynamic material balances of the GDP may be limited to the gas phase within the process equipment.

Section 74.33(c)(6)(ii) requires an item control program for SNM containers, in order to provide assurance that SNM is not diverted. This normally involves the use of tamper indicating devices. As long as the SNM is in the form of UF_6 and contained in a cylinder of significant size, diversion of material would require either removal of the entire container or removal of material from the container. Both of these diversion scenarios would require the use of equipment (cylinder transporter or heater, inserting equipment, cooling equipment, etc.) and the unauthorized use of such equipment would be easier to detect than would a broken tamper indicating device. Application of TIDs and the resolution of TID failures would require significant resources. The major cost would be associated with manpower to handle cylinders so the TIDs could be applied and to move and reweigh cylinders with broken TIDs. The estimated annual costs for applying TIDs and resolving TID failures is about $100,000 per plant. Therefore, section 74.33(c)(6)(ii), when applied to the GDPs, should be modified to add another exemption for UF_6 cylinders weighing 500 lbs or more (i.e., those that are not man-portable).

54. Section 76.119 Security Facility Approval and Safeguarding of National Security Information and Restricted Data

This section states that the requirements for security facility approval and for safeguarding of classified matter are contained in Part 95. Section 95.25(a)(3) states that physical checks of security containers must be made as soon as possible after the close of each normal day and at least every eight hours thereafter during non-working hours.

The checking of each security container at least every eight hours is more stringent than current practice at the GDPs which is to check 25% of the containers daily on a rotational basis. DOE has considered this lower frequency acceptable because the containers are within a controlled access area and procedures are in place to preclude access to the containers by uncleared personnel. We recommend that section 76.119 be modified to state that checking of 25% of the security containers daily on a rotational basis is adequate if the containers are in a controlled access area.

Sections 95.37, 95.41, 95.43 and 95.47 establish the requirements for classification and preparation, accountability, reproduction and destruction of secret documents. These NRC requirements are more stringent than those currently imposed by DOE. The NRC requirements call for unique document numbers, accountability records, inventories, annotation of copy and series, destruction certificates, written authorization to reproduce, and

internal receipting of documents. DOE regulations do not call for these actions based on their investigations which have shown these requirements to be extremely costly without significant improvement in protection of the documents. We recommend that section 76.119 be modified to specifically state that 10 CFR § 95.37(g) and (h), 95.41, 95.43, and the last half of 95.47 beginning with the words "If the document contains . . ." do not apply to USEC and to clarify that document control practices implemented under DOE security oversight may continue.

55. Section 76.120 Reporting Requirements

This section sets forth the reporting requirements for events that may occur at the facilities. The requirements essentially parallel those in 10 CFR § 70.50 but they are not the same. Incident reporting requirements for USEC and NRC fuel cycle licensees should be consistent. USEC recommends that section 76.120 be revised to reflect the language of section 70.50 for consistency, with departures only where the situation may not be applicable to GDPs, or where the requirement is not specifically in section 70.50 but is instead in other parts of Part 70 -- as in the case for the proposed "Immediate report."

Section 76.120(a)(4) should be revised to delete the reference to "general emergency" for internal consistency. According to proposed section 76.91(c), accidents are classified as Alerts or Site Area Emergencies only.

Section 76.120(c)(3) should be revised to reflect the fact that the plants have onsite medical facilities and the requirement is intended for offsite transportation.

56. Section 76.121 Inspections

This section would require the Corporation to afford to the NRC the opportunity to inspect the GDP facilities, make records available, provide office space and various utility services, and afford resident inspectors with unfettered plant access. USEC agrees with this section.

57. Section 76.123 Tests

This section would provide for the performance of any tests which the NRC deems appropriate or necessary for administration of Part 76. USEC agrees with this section.

58. Section 76.131 Violations

This section would permit the NRC to obtain an injunction or other court order to prevent statutory or regulatory violations and to obtain a court order for the payment of a civil penalty imposed under section 1312(e) of the AEA, as amended and section 206 of the Energy Reorganization Act of 1974. USEC agrees with this section.

59. Section 76.133 Criminal Penalties

This section would impose criminal penalties for violations of Part 76 regulations issued under one or more of sections 161b, 161i, or 161o of the AEA. USEC concurs that criminal sanctions may be imposed for violations of Part 76

regulations issued under section 161b or section 161i. These provisions give the Commission authority to issue regulations to govern the possession and use of special nuclear material.

However, criminal penalties cannot be predicated on section 161o of the AEA. That provision states that the Commission is authorized to require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105." 42 U.S.C. § 2201(o) (1988) (emphasis added). Section 31, entitled "Research Assistance," directs the Commission to promote research and development activities related to six specific areas. USEC, of course, does not engage in research and development activities in these areas. Furthermore, while section 161o mentions licenses issued under various sections of the AEA, it makes no reference to certificates of compliance issued under section 1701 of the AEA.

Therefore, section 76.133 should be modified to specify only those regulations issued under sections 161b and 161i and to exclude from its coverage those regulations issued exclusively under the authority of section 161o. Similarly, to the extent that other Parts of the NRC regulations prescribe criminal penalties (e.g., 10 CFR § 19.40), comparable modifications should be made.

60. Section 95.3 Scope

This section would apply 10 CFR Part 95 to the Corporation and its contractors. USEC agrees that Part 95 generally should be applicable to the Corporation. However, for the reasons discussed under proposed section 76.10, section 95.61 ("Violations") should be amended to specify that, at the present time, civil penalties may be issued only for violations of section 206 of the Energy Reorganization Act of 1974. This change, which would be applicable only to USEC, is contained in USEC's proposed section 76.60.

61. Section 95.5 Definitions

This section would, for purposes of Part 95, define "licensee" to include the Corporation. This section is unnecessary and is inconsistent with the manner in which other generally applicable NRC regulations are treated in the proposed rule. USEC will not be a "licensee" and there is no reason to define that term to include the Corporation within Part 95. Instead, as the NRC has done with Parts 19, 20, 21 and others, section 76.60 applies these regulations to the Corporation. While a reference to Part 95 is absent from the NRC's proposed section 76.60, we have proposed its inclusion in that section in Enclosure B. USEC recommends that the proposed modification to section 95.5 be deleted.

ENCLOSURE B

UNITED STATES ENRICHMENT CORPORATION
"MARK-UP" OF
PROPOSED NRC STANDARDS FOR
CERTIFICATION OF GASEOUS DIFFUSION PLANTS

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 **[in accordance with 10 CFR 76.60 to]** 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 **[in accordance with 10 CFR 76.60]** 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 **[in accordance with 10 CFR 76.60]** to each individual, partnership, corporation, or other entity required to obtain a certificate of compliance or an 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 only 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.

Subpart B - Application

Subpart C - Certification

76.62 Issuance of certificate **[and/]**or approval of compliance plan.

76.64 Denial of certificate or compliance plan.

[76.65 Inalienability of certificates.

76.66 Expiration and termination of certificates.]

76.68 Plant changes.

76.70 Post issuance.

76.72 Miscellaneous procedural matters.

76.76 Backfitting.

Subpart D - Safety

76.81 Authorized use of radioactive material.

76.83 Transfer of radioactive material.

~~76.85 Assessment of accidents.~~

76.87 ~~Technical~~ **[Operational]** safety requirements.

76.89 Criticality accident requirements.

76.91 Emergency planning.

76.93 Quality assurance.

76.95 Training.

Subpart E - Safeguards and Security

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

Subpart F - Reports and Inspections

Subpart G - Enforcement

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 **[those portions of]** the gaseous diffusion plants at Portsmouth, Ohio, and Paducah, Kentucky leased by DOE to the Corporation **[or operated by the Corporation pursuant to a plan for the privatization of USEC that is approved by the President]**. 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.

[*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 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 **[established by the Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2923, 42 U.S.C. 2297 et seq.),]** that is authorized under lease from the Department of Energy to operate the gaseous diffusion enrichment plants in Paducah, Kentucky, and Portsmouth, Ohio **[, or any person authorized to operate one or both of the gaseous diffusion plants pursuant to a plan for the privatization of USEC that is approved by the President]**.

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.~~ **[source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.]**

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

Effective dose equivalent means the sum of the products of the dose equivalent to the body organ or tissue and the weighing 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.

[*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 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, grams = (grams contained U-235) + (grams plutonium) + (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, grams = (grams contained U-235) + 2 (grams U-233 + 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~~ **[the Commission issues the initial certificate of compliance and/or approves an initial plan for achieving compliance]**, 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.

[(c) Subsection (b) shall not apply until the initial certification application is submitted pursuant to § 76.31.]

§ 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 **[; provided, however, that the Corporation is not subject to the authority of § 234 of the Act.]**.

(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.

[After the Commission issues the initial certificate of compliance and/or approves an initial plan for achieving compliance, the] ~~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.

[(a)] 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.

[(b) The Commission may grant an exemption where special circumstances are present. Special circumstances include, but are not limited to, whenever the Corporation or the Department advises the NRC in writing that the exemption would be in furtherance of the common defense and security of the United States, the nonproliferation of Atomic weapons, or any of the other important governmental functions identified in the statutory purposes of the Corporation set forth in section 1202 of the Atomic Energy Act.]

Subpart B - Application

§ 76.31 Annual application requirement.

[After the filing of the initial certification application,] [t]~~T~~he Corporation shall apply to the Commission each year~~,~~ 1/ ~~on or before April 15,~~ for a certificate of compliance ~~with the~~

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~~ [later].

~~Commission's regulations for the gaseous diffusion plants leased from the Department~~ **[in accordance with § 76.36]**.

§ 76.33 **[Initial]** ~~A~~**[a]**pplication procedures.

(a) Filing requirements. An application for **[an initial]** 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 **[an initial]** 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~~ **[initial]** application for a certificate of compliance must contain:

(1) The information set forth in § 76.35.

(2) A plan for achieving compliance with respect to any areas of noncompliance with the NRC's regulations that are ~~identifiable~~ **[identified]** by the Corporation ~~at the time of the filing~~ **[as of the date]** of the application **[and which shall contain such information as the Corporation deems necessary to enable the Commission to make the finding required by § 1701(d) of the Act]**, 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 **[initial]** application.

(e) Additional information. At any time during the review of an **[initial]** 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.~~

[(f) An initial 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.]

§ 76.35 Contents of [initial] applications.

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

[(a) Proposed certificate of compliance conditions and Operational Safety Requirements as required by § 76.87. A summary of the bases or reasons for the Operational Safety Requirements, other than those covering administrative controls, shall also be included in the application, but shall not become part of the Operational Safety Requirements.]

(~~a~~[b]) A [S]~~a~~safety ~~analysis report~~ [Demonstration] 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**[s]**, 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.~~

[(8) A description of the program, as appropriate, for processing, management, and disposal of mixed and radioactive wastes generated by operations and depleted uranium. Such

description shall be limited to processing, management, and disposal activities conducted during plant operation and prior to plant shutdown and decontamination and decommissioning. The Safety Demonstration must also include a description of the radioactive and mixed 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.

(9) An accident analysis to establish the basis for Operational Safety Requirements for 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.

(c) Program Plans covering the following areas:

(1) A quality assurance plan that meets the requirements of § 76.93.]

~~(d)~~ **[(2)]** An emergency plan that meets the requirements of § 76.91 of this part.

~~(e)~~ **[(3)]** 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. **[This requirement shall not apply to special nuclear material which the Department retains title to, possession, or control of pursuant to the "Joint Statement of Understanding" between the Commission and the Department. 59 Fed. Reg. 4729.]** The plan must describe, as appropriate:

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

~~(2)~~ **[(ii)]** 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)~~ **[(iii)]** How special nuclear material of low strategic significance will be controlled and accounted for in accordance with the relevant requirements of Subpart E.

[(4) A security and safeguards plan which shall include:]

~~(f)~~ **[(i)]** 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)~~ [(ii)] 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. **[This requirement shall not apply to special nuclear material for which the Department retains title, possession, or control.]** The plan must describe, as appropriate:

~~(1)~~ [(A)] 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)~~ [(B)] How special nuclear material of moderate strategic significance will be protected in accordance with the relevant requirements of Subpart E;

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

~~(4)~~ [(D)] 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)~~[(iii)] 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)~~[(d)] 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)~~ [(e)] 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.

[§ 76.36 Annual Renewals.]

[(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file an annual application for renewal, as required by § 76.31 of this part. 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. 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.

(b) An application for renewal shall be subject to the requirements in § 76.33 except for § 76.33(c), and shall contain the following information:

(1) Any proposed changes in the certificate of compliance conditions or Operational Safety Requirements which the Corporation wishes to be incorporated into the certificate. A summary of the bases or reasons for the proposed changes shall also be included in the application, but shall not become part of the Operational Safety Requirements.

(2) Any proposed changes to any of the Program Plans required by § 76.35(c) that require prior NRC approval pursuant to § 76.51.

(3) Any changes to the Safety Demonstration which the Corporation has made without prior NRC approval pursuant to § 76.68 and any changes to the Program Plans required by § 76.35(c) which the Corporation has made without prior NRC approval pursuant to § 76.51.

(4) Any changes to certificate conditions, Operational Safety Requirements or Program Plans for which the Corporation has sought and received Commission approval pursuant to § 76.45.]

§ 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.

[(a)] 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.

[(b)(1) The Corporation shall make no change that would

decrease the effectiveness of any program implemented pursuant to § 76.35(c) or § 74.33(b) of this title without prior approval of the Commission. Should the Corporation desire to make such changes, it shall submit an application for amendment to its certificate pursuant to § 76.45.

(2) The Corporation shall maintain records of changes made without prior Commission approval pursuant to paragraph (b)(1) of this section as follows:

(i) for a period of five years from the date of change to the material control and accounting plan submitted pursuant to § 76.35(c)(3);

(ii) for a period of three years from the date of change to the portions of the security and safeguards plan submitted pursuant to §§ 76.35(c)(4)(i) and (ii).

(3) Reports containing a description of each change made pursuant to paragraph (b)(1) of this section shall be furnished to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and the appropriate NRC Regional Office as follows:

(i) within 6 months after the date of change to the material control and accounting plan submitted pursuant to § 76.35(c)(3) or § 74.33(b);

(ii) within 2 months after the date of change to the portions of the security and safeguards plan submitted pursuant to §§ 76.35(c)(4)(i) and (ii);

(iii) within 6 months after the date of change to the emergency plan submitted pursuant to § 76.35(c)(2), with an additional copy of the report to be provided to affected offsite response organizations.

§ 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**[n]** ~~sufficient~~ annual application **[in proper form]** 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 **[has been finally determined by the Commission]**.

§ 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~~ **[comply]** with the provisions of this part.

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

[(i) Civil penalties shall not be imposed on the Corporation pursuant to § 19.30 except for violations of section 206 of the Energy Reorganization Act.

(ii) The Corporation shall post NRC Form 3 not later than 30 days after the Commission issues the initial certificate of compliance and/or approves an initial plan for achieving compliance, during the term of the certificate, and for 30 days following certificate termination.]

(d) The Corporation shall ~~demonstrate compliance~~ **[comply]** with the applicable provisions of 10 CFR Part 20, "Standards For Protection Against Radiation~~.~~" **[with the following modifications:]**

[(i) Civil penalties shall not be imposed on the Corporation pursuant to § 20.2401 except for violations of section 206 of the Energy Reorganization Act.

(ii) Within 2 years after this rule is published in the Federal Register, the Corporation shall establish its administrative and procedural controls necessary for compliance with the applicable provisions of 10 CFR Part 20.]

(e) The Corporation shall ~~demonstrate compliance~~ [comply] with the applicable provisions of 10 CFR Part 21, "Reporting of Defects and Noncompliance~~.~~" [with the following modifications:]

[(i) The Corporation shall comply with the requirements in §§ 21.6 and 21.21 within 30 days after the Commission issues the initial certificate of compliance and/or approves an initial plan for achieving compliance.

(ii) Under § 21.31, only those procurement documents issued by the Corporation after it submits the initial application for a certificate of compliance shall specify that the provisions of 10 CFR Part 21 apply.]

(f) The Corporation shall ~~demonstrate compliance~~ [comply] 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~~ **[comply]** with the applicable provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."

(h) The Corporation shall ~~demonstrate compliance~~ **[comply]** 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 comply with the applicable provisions of 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data;" provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 except for violations of section 206 of the Energy Reorganization Act.]

~~(i)~~ [(j)] The Corporation shall ~~demonstrate compliance~~ **[comply]** 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 **[and/]**or approval of compliance plan.

(a) Upon a finding of compliance with the Commission's regulations for issuance of a certificate **[and/]** or approval of a compliance plan, the Director shall issue a written decision explaining the decision. **[The Director may issue a certificate of compliance covering those areas where the Corporation is in compliance with applicable Commission requirements, and approve a compliance plan for the remaining areas of noncompliance.]** 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 **[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 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 **[and shall be limited to matters raised in the petitioner's written or oral comments.]** Any person described above may file a response to any petition for review, not to exceed 30 pages, within ~~10~~[30] 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. **[The Director shall take such action even if the Corporation has previously submitted a proposed compliance plan addressing in whole or in part the identified areas of noncompliance.]**

(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 ~~whe~~ 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~~ **[30]** 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. **[A petition for review filed by the Corporation shall be granted by the Commission and the Director's decision shall not become effective except in accordance with § 76.64(f).]** 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.

[(f) If the Commission denies the application or disapproves the compliance plan, it shall set forth in its decision an effective date at least 10 days after the date of such decision.]

[§ 76.65 Inalienability of certificates.

The certificate granted under the regulations in this part, shall not 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.]

[§ 76.66 Expiration and termination of certificates

(a) Except as provided in § 76.55, 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.

(c) If the Corporation does not submit an annual renewal application under § 76.36, the Corporation shall on or before the expiration date specified in the existing certificate terminate operation of the GDPs.]

§ 76.68 Plant changes.

(a)[(1)] The Corporation may make changes to the plant or to the plant's operations [as described in the Safety Demonstration portion of the application] without prior Commission approval ~~provided all the provisions of this section are met.~~ [unless the proposed changes involve a change in the certificate conditions or Operational Safety Requirements incorporated in the application pursuant to § 76.35(a), or an unreviewed safety question.]

[(2) A proposed change shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment subject to Operational Safety Requirements previously evaluated

in the Safety Demonstration may be increased; or (ii) if a possibility for an accident or malfunction of a different type with equivalent or higher potential consequences than any evaluated previously in the Safety Demonstration may be created.]

~~(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.~~

~~(c)~~[(b)(1)] 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,~~ [made pursuant to this section to the extent that these changes constitute changes in the facility or its operations as described in the Safety Demonstration. These records must include a written safety evaluation which provides the basis for the determination that the change does not involve an unreviewed safety question.] ~~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.~~

[(2) The Corporation shall submit as specified in § 76.5, a report containing a brief description of any changes to the plant or its operations as described in the Safety Demonstration, including a summary of the safety evaluation of each. The report shall be submitted annually.]

[(3) The records of changes in the plant shall be maintained until the date of termination of the certificate, and records of changes in operations shall be maintained for a period of five years.]

[(c) If the Corporation desires (1) a change in the conditions or Operational Safety Requirements incorporated in the application or (2) a change in the facility or operations as described in the Safety Demonstration portion of the application, which involves an unreviewed safety question or a change in Operational Safety Requirements, it shall submit an application for amendment of the certificate pursuant to § 76.45.]

§ 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 **[adversely affected]** 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 rules 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 10 CFR 2.205, ~~Subpart B,~~ and in 10 CFR ~~2.205~~ **[Part 2]**, 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 a 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~~ **[source material, special nuclear material and byproduct]** 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 **[or facility leased by 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[s] (b) [(3) through (8)] 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 **[may]** 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~~ [Operational] safety requirements.

(a) The Corporation shall establish ~~technical~~ [Operational] [S]~~s~~afety [R]~~r~~equirements. [These Operational Safety Requirements shall address, as appropriate, design features, process parameters, and surveillance requirements.] In establishing the requirements, the Corporation shall consider the ~~analyses and results of the safety analysis report submitted~~ [assessment of accidents prepared] pursuant to § 76.35.

(b) The format for the ~~technical~~ [Operational] [S]~~s~~afety [R]~~r~~equirements 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)~~ **[**(c)(1) If any ~~safety limit~~ **[Operational Safety Requirement]** is ~~exceeded~~ **[violated]**, corrective action must be taken as stated in the ~~technical~~ **[Operational] [S]**~~s~~afety **[R]**~~r~~equirements or the affected part of the process must be shut down unless this action would ~~further reduce the margin of safety.~~ **[increase the risk to the health and safety of the public or plant personnel.]**

~~(ii)~~ **[**(2)**]** 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)~~ **[**(3)**]** 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)~~ [(d)] 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. [Except for:

(i) areas with less than 700 grams of contained uranium-235; or

(ii) areas with less than 1,500 grams of contained uranium-235 if no uranium is enriched to more than 4 percent by weight of uranium-235;

(iii) areas with less than 1,400 grams of contained uranium-235 if no uranium is enriched to more than 5 percent by weight of uranium-235;

(iv) areas where material is packaged in containers approved under Part 71 and stored in isolated arrays which are smaller than the arrays associated with the container approval standards of Part 71;

(v) **process buildings which contain homogeneous material enriched to less than 1%]** 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~~ **[identified in paragraph (a) of this section]** 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.

[(c) The Corporation may apply to the Commission for exemptions from the requirements of this section if it believes good cause exists why it should be granted an exemption. Such applicacion shall specify the reasons for the relief requested.]

§ 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)~~ **[(c)(2)]** shall include the following information:

(a) Plant description. A **[brief]** 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 **[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.

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

(g) Responsibilities. A **[brief]** 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 **[brief]** description of responsibilities for developing, maintaining, and updating the plan.

(h) Notification and coordination. A commitment to and a **[brief]** 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 **[brief]** 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 **[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~~, 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~~ **[Condition]**. A **[brief]** 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 **[Basic Requirements]** ~~quality assurance criteria~~ of ASME NQA-1-1989, "Quality Assurance Program Requirements for Nuclear Facilities" **[or satisfying appropriate alternatives to the applicable Basic Requirements.] [The Supplements and Appendices of ASME NQA-1-1989 are not requirements but may be used as guidance.** The Corporation shall execute **[its quality assurance program]** ~~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 CDPs 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.~~

[The Corporation shall establish, implement, and maintain a training program to assure that personnel are appropriately trained to perform their nuclear-safety related functions.]

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 Corporation 2/ 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,

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2/ For 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.

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 (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~~.~~ **[except that:]**

[(i) Inventories of uranium outside of the enrichment processing equipment conducted at least every 370 days meet the requirements of § 70.51(d).

(ii) Statistical sampling can be used to ensure accounting records required by §§ 74.15(b)(2) and 74.33(c)(2).

(iii) Dynamic material balances conducted to meet the requirements in § 74.33(c)(4)(i) must only consider the gas phase.

(iv) An exemption from the item control requirements in § 74.33(c)(6) is granted for UF_6 cylinders weighing more than 500 lbs.]

(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.

[(a)] The requirements for security facility approval and for safeguarding of classified matter are contained in Part 95 of this chapter~~.~~[, except that:]

[(1) In lieu of the requirements in § 95.25(a)(3), the Corporation may conduct physical checks of 25 percent of the security containers located in a controlled access area on a daily, rotational basis; and

(2) The requirements set forth in §§ 95.37(g), 95.37(h), 95.41, 95.43, and the last two sentences in § 95.47 (documents containing Secret National Security Information) shall not apply to the Corporation so long as Department security oversight over such information continues.]

Subpart F - Reports and Inspections

§ 76.120 Reporting requirements.

(a) Immediate report. The Corporation shall notify the NRC Operations Center 3/ within one hour after discovery of:

(1) A criticality event;

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

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

(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, **[or]** 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 event 4/ that ~~could~~ prevent**[s]** immediate protective actions necessary to avoid 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~~ **[and]**

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

(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 **[prior to]** ~~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 **[by an Operational Safety Requirement]** to prevent releases, prevent exposures to radiation and radioactive materials exceeding specified limits, **[or]** mitigate the consequences of an accident~~, or restore this facility to a preestablished safe condition after an accident~~;

(ii) The equipment is required **[by an Operational Safety Requirement]** to be available and either should have been operating or should have operated on demand; ~~or~~ **[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~~ **[an offsite]** 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 3 years.~~

~~(e)~~ **[(d)]** 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; **[and]**

(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)~~ **[(v)]** Corrective actions taken or planned and the results of any evaluations or assessments; **[and]**

~~(vii)~~ **[(vi)]** 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

[under the Corporation's control] 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~~,~~ **[or]** 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~~,~~ **[or]** 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~~,~~ **[or]** 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. 5/

5/ *In USEC's Enclosure A, it requests that the NRC modify section 76.133 to eliminate from its scope any regulations issued exclusively under the authority of AEA section 161o.*

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**[, in accordance with 10 CFR 76.60,]** 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.

/s/ Samuel J. Chilk

Samuel J. Chilk,
Secretary of the Commission.