

NUCLEAR REGULATORY COMMISSION

[Docket No. 07007004; EA-23-018; NRC-2023-0157]

In the Matter of American Centrifuge Operating, LLC;

American Centrifuge Operating Oak Ridge

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order (Order) to American Centrifuge Operating, LLC (ACO, the licensee), as a result of a successful alternative dispute resolution mediation session completed on June 27, 2023. The commitments outlined in the Order were made as part of a settlement agreement concerning apparent violations by ACO for failing to meet NRC regulatory requirements related to protection of classified information. Details regarding the apparent violations contain security-related information and are therefore documented in a non-public version of the Order. The Order is effective upon issuance.

DATES: The Order was issued on September 21, 2023.

ADDRESSES: Please refer to Docket ID **NRC-2023-0157** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0157**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the “For Further Information Contact” section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The Confirmatory Order modifying the license of American Centrifuge Operating, LLC, is available in ADAMS under Accession No. ML23263B067.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Matthew Toth, Region II, telephone: 404-997-4445; email: Matthew.Toth@nrc.gov and Mark Kowal, Region II, telephone: 404-997-4523, email: Mark.Kowal@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: September 22, 2023.

For the Nuclear Regulatory Commission.

/RA/

Laura A. Dudes,
Regional Administrator, NRC Region II.

Attachment – CONFIRMATORY ORDER MODIFYING LICENSE – AMERICAN CENTRIFUGE OPERATING – OAK RIDGE

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	Docket Number 07007004
)	
American Centrifuge Operating, LLC)	License Number SNM-2011
)	
American Centrifuge Operating Oak Ridge)	EA-23-018

CONFIRMATORY ORDER MODIFYING LICENSE

I

American Centrifuge Operating, LLC (ACO or Licensee) is the holder of Materials License No. SNM-2011 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to part 95 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the operation of the ACO facility in Piketon, Ohio (ACO-Piketon), the ACO facility in Oak Ridge, Tennessee (ACO-OR), and the ACO headquarters facility in Bethesda, Maryland, in accordance with conditions specified therein.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on June 27, 2023, in Rockville, Maryland.

II

On March 30, 2023, the NRC issued Special Inspection Report (IR) 07007004/2023401 (Agencywide Documents Access and Management System (ADAMS) ML23074A222, public cover letter) to ACO-OR which documented the identification of apparent violations that were being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violations involved the licensee's failure to meet regulatory requirements. Details regarding the apparent violations contain security-related information and are therefore documented in the non-public version of the Confirmatory Order.

By the same letter, dated March 30, 2023, the NRC notified ACO of the results of the inspection with an opportunity to: (1) provide a response in writing, (2) attend a predecisional enforcement conference or (3) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's letter of March 30, 2023, ACO requested the use of the NRC's ADR process to resolve differences it had with the NRC. On June 27, 2023, the NRC and ACO met in an ADR session mediated by a professional mediator arranged through the U.S. Department of Energy. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, ACO and the NRC reached a preliminary settlement agreement. The elements of the agreement include the following:

1. ACO acknowledged that the violations occurred as documented in NRC IR number 07007004/2023401 (ADAMS Accession No. ML23074A222, public cover letter) issued on March 30, 2023, and as described in Section II of this Order.
2. In recognition of the prompt and comprehensive corrective actions taken in response to the apparent violations, as documented in this CO, discussed at the ADR, and documented in IR 07007004/2023401 issued on March 30, 2023, ACO is not required to provide a written response in accordance with 10 CFR 2.201. The licensee initiated a root cause analysis investigation and established additional corrective actions based on results from that investigation. Corrective actions and enhancements completed by ACO contain security-related information and are therefore contained in the non-public version of the Confirmatory Order.
3. For the purposes of this agreement, portions of the Confirmatory Order, as designated herein, will apply to ACO Oak Ridge (Oak Ridge), ACO-Piketon (Piketon), or both.

4. Based on ACO's review of the incident and NRC's concerns with respect to precluding recurrence of the violations, ACO agrees to implement corrective actions and enhancements that contain security-related information and are therefore documented in the non-public version of the Confirmatory Order.

Within 15 months from the date of the Confirmatory Order, ACO will submit to the NRC for approval a revision to the Oak Ridge and Piketon Standard Practice Procedure Plans to reflect the commitments which include marking requirements, searching requirements, training, and root cause evaluation criteria. Details regarding the commitments contain security-related information and are in the described in the non-public version of the Confirmatory Order.

5. Upon implementation of all the actions required of ACO in the Confirmatory Order, ACO will notify the NRC Region II Regional Administrator.
6. The NRC considers the corrective actions discussed above to be appropriately prompt and comprehensive to address the causes which resulted in the incidents discussed in the NRC's IR dated March 30, 2023.
7. In consideration of the commitments delineated above, the NRC agrees not to cite the violations and agrees not to propose a civil penalty for all matters discussed in the NRC's IR dated March 30, 2023.
8. The NRC agrees that the Confirmatory Order will not count as escalated

enforcement in the civil penalty assessment process for future enforcement cases involving ACO.

9. The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions of the Confirmatory Order upon a showing by ACO of good cause.

10. The NRC and ACO agree that the above elements will be incorporated into issuance of a Confirmatory Order, with a Waiver of Hearing Rights.

11. This agreement is binding upon successors and assigns of ACO.

Based on the completed actions described above, and the commitments described in Section V below, the NRC agrees to not pursue any further enforcement action based on the apparent violations identified in the NRC's March 30, 2023, letter and the Order will not count as escalated enforcement in the civil penalty assessment process for future enforcement cases involving ACO.

On September 12, 2023, ACO consented to issuing this Confirmatory Order with the commitments, as described in Section V below. ACO further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that ACO has waived its right to a hearing.

IV

I find that ACO's actions completed and planned, as described in Section III above, combined with the commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that ACO's commitments be confirmed by this Confirmatory Order. Based on the above and ACO's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 187 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 95, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT ACO "License No. SNM-2011" IS MODIFIED AS FOLLOWS:

Within 15 months from the date of the Confirmatory Order, ACO will submit to the NRC for approval a revision to the Oak Ridge and Piketon Standard Practice Procedure Plans to reflect the commitments which include marking requirements, searching requirements, training, and root cause evaluation criteria. Details regarding the commitments contain security-related information and are in the described in the non-public version of the Confirmatory Order.

This agreement is binding upon successors and assigns of ACO. The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by ACO or its successors of good cause.

VI

Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation:

- A. This Confirmatory Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

- B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

- C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail

addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively¹. The request must include the following information:

1. A description of the licensing action with a citation to this Federal Register notice;
 2. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and
 3. The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.
- D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:
1. There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

2. The requester has established a legitimate need for access to SUNSI.
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- E. If the NRC staff determines that the requester satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.
 - F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

G. Review of Denials of Access.

1. If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

2. The requester may challenge the NRC staffs adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC

staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 2 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

VII

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than ACO, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

³ Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or

representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests

certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person (other than ACO) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR. 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

Laura A. Dudes /RA/

Regional Administrator
NRC Region II

Dated this 21st day of September 2023

Attachments: As stated

ALL FACILITIES OWNED AND OPERATED BY AMERICAN CENTRIFUGE OPERATING, LLC

1) American Centrifuge Operating, LLC

Larry Cutlip
President
400 Centrifuge Way
Oak Ridge, TN 37830

2) American Centrifuge Operating, LLC – Piketon (ACO-Piketon)

Docket No.: 07007004
License No.: SNM-2011

Mathew Snider
Enrichment Operations Plant Manager/Operations Manager
3930 U.S. Route 23 South
P.O. Box 628 Mail Stop 7560
Piketon, Ohio 45661

3) American Centrifuge Operating, LLC – Oak Ridge (ACO-OR)

Docket No.: 07007004
License No.: SNM-2011

Mark McClure
Site Director
400 Centrifuge Way
Oak Ridge, TN 37830

General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

<u>Day</u>	<u>Event/Activity</u>
0	Publication of <i>Federal Register</i> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the status determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

<u>Day</u>	<u>Event/Activity</u>
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervener reply to answers.
>A + 60	Decision on contention admission.