

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 2, 40, 70, and 76**

RIN 3150-AF56

USEC Privatization Act: Certification and Licensing of Uranium Enrichment Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the certification and licensing of uranium enrichment facilities to conform to changes made to the Atomic Energy Act of 1954, as amended (the Act), by the USEC Privatization Act legislation. Although the principal effect of this legislation is to direct the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity, this legislation also amended the Act with respect to NRC certification of gaseous diffusion plants leased by USEC and the licensing of atomic vapor laser isotope separation (AVLIS) technology. USEC is responsible for the operation of the two gaseous diffusion plants and the development of the AVLIS technology.

The legislation requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; provides for the issuance of civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants; prohibits issuance of a license/certificate to the Corporation or its successor if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or if its issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; and eliminates the annual requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations. The Commission may determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertify USEC's or its successor's compliance with its regulations not less frequently than every five years. The adopted rule changes bring the current regulations into conformance with these provisions.

DATES: The final rule is effective on April 14, 1997 unless significant adverse comments are received by March 14, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of comments received may be examined or copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6209.

SUPPLEMENTARY INFORMATION:**Background**

On April 26, 1996, President Clinton signed legislation that provides for fiscal year (FY) 1996 appropriations to a number of Federal agencies (H.R. 3019 (Pub. L. 104-134)). Included within the legislation is Title III, Chapter 1, entitled "USEC Privatization Act," which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of USEC will be responsible for the operation of the gaseous diffusion plants known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, the legislation amended the Atomic Energy Act of 1954, as amended (the Act), with respect to the certification of gaseous diffusion plants and licensing of an AVLIS uranium enrichment facility. The gaseous diffusion plants are regulated under 10 CFR Part 76, "Certification of Gaseous Diffusion Plants." Operation of an AVLIS uranium enrichment facility will be licensed under 10 CFR Parts 40, "Domestic Licensing of Source material" and 70, "Domestic Licensing of Special Nuclear Material."

Discussion

A principal effect of Pub. L. 104-134 on NRC licensing actions is that the referenced AVLIS uranium enrichment facilities will be licensed pursuant to the provisions of the Act pertaining to source material and special nuclear material rather than the provisions pertaining to a production facility. Under this legislation, AVLIS licensing will be a single-step licensing process with one license issued pursuant to 10 CFR parts 40 and 70, rather than a two-step licensing process under 10 CFR part 50. The regulations previously were amended on April 30, 1992 (57 FR 18388) to conform with the "Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990," (Pub. L. 101-575) by providing a single-step process for licensing uranium enrichment. The April 30, 1992 amendments also made 10 CFR part 70 the basic regulation for licensing a uranium enrichment facility. Although the 1990 legislation specifically excluded AVLIS uranium enrichment, then under development by the Department of Energy, from the one-step licensing process, Pub. L. 104-134 made the development of AVLIS a responsibility of USEC (which will become a private entity as a result of this legislation) and removed the exclusion of AVLIS from one-step licensing. Therefore, licensing of AVLIS, as with other licensed uranium enrichment facilities, will be a one-step process requiring an environmental review, adjudicatory hearing, inspection before operation, and third party liability insurance. However, for other purposes of the Act, such as controlling the export of specially designed or prepared uranium enrichment equipment and preservation of Federal authority in Agreement States, all uranium enrichment facilities regulated by the NRC remain under the Atomic Energy Act provisions for production facilities. Specific implementing amendments are as follows:

In 10 CFR 70.1, "Purpose" is revised to indicate that all uranium enrichment facilities requiring a license will be licensed under 10 CFR part 70, "Domestic Licensing of Special Nuclear Material."

In 10 CFR 40.4 and 70.4, "Definitions" the term Corporation is added to refer appropriately to the licensing of the Corporation or its successor for operation of an AVLIS facility.

In 10 CFR 76.4, "Definitions" the term Corporation is amended to include the successor to USEC.

In addition, in conformance with the 1996 legislation, provisions are made in 10 CFR parts 2 and 76 to allow the NRC to impose civil penalties on the USEC or its successor for failure to comply with regulatory requirements governing the operation of the gaseous diffusion plants regulated under 10 CFR part 76. Civil penalty authority presently contained in 10 CFR part 70 would apply to AVLIS licensing. Furthermore, the "General Statement of Policy and Procedures for NRC Enforcement Action" NUREG-1600, is being supplemented to provide examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of gaseous diffusion plant operations. Specific implementing amendments are as follows:

In 10 CFR 2.200(a) concerning the scope of subpart B of part 2, a new sentence is added to read as follows: "However, with regard to the holder of a part 76 Certificate of Compliance or Compliance Plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70." This will clarify that the provisions governing the issuance of an order or notice of violation to the holder of a certificate of compliance or compliance plan under 10 CFR part 76 are contained in § 76.70 but the civil penalty procedures in subpart B of part 2 are applicable to these entities.

In 10 CFR 2.205(a), a reference to the § 76.70(d), "notice of violation," and a reference to the provisions of a 10 CFR part 76, "certificate of compliance or compliance plan," are added because the Commission now has authority to issue civil penalties to the Corporation for violation of its regulations.

Similarly, in 10 CFR 76.10(b), the last phrase, "except, that the Corporation is not subject to the authority of Section 234 of the Act," is eliminated because the Corporation is now subject to Section 234 of the Act.

10 CFR 76.60 (c)(1) and (d)(1) are removed. These paragraph designations are reserved and the last phrase of § 76.60(i), "provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act" is also eliminated. These prohibitions on issuing civil penalties are removed to permit the imposition of civil penalties. In 10 CFR 76.72(d), a reference to the new Section 234 civil penalty authority is added.

The 10 CFR 76.131(a)(3) reference to Title XI of the Energy Policy Act of 1992, is eliminated because this act's applicable provisions were amendments

to the Atomic Energy Act of 1954. Reference to Section 206 of the Energy Reorganization Act has been relocated from § 76.131(b) to paragraph (b)(2). References to violations under Section 234 of the Atomic Energy Act of 1954, as amended, and specific references to sections of the Act are added as paragraphs (b)(1), (b)(3), and (b)(4) to describe the new civil penalty authority.

A provision is also added stating that the Commission will not issue a license or certificate to the Corporation or its successor if the Commission finds that the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or that issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services. This provision is added to conform with the legislation which includes specific language that restricts issuance of a certificate or a license to the USEC or its successor if the issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. Heretofore, the Commission has not been asked in its regulatory decisions to evaluate whether a proposed action is inimical to the viability of the domestic industries subject to NRC's regulation. Information about the intent of the language is contained in a Senate Committee report on an earlier version of the legislation (S. Rpt. No. 104-173 on S. 755, November 17, 1995), which states that the provision is to "guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in such a manner inconsistent with its maintenance as an ongoing uranium enrichment concern." The report further states that no certificate or license should be issued "if in the opinion of the NRC the issuance of such a license or certificate of compliance would be inimical to the common defense and security of the United States or would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances."

To comply with this provision of the 1996 legislation, the NRC staff will evaluate this restriction on certification and licensing based, in part, on the following:

Information required under §§ 70.22 and 76.33 "information known to the applicant concerning the control or

ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government."

Information to be obtained under a proposed rule (61 FR 40555; August 5, 1996) amending the provisions of 10 CFR parts 25 and 95 that deal with requirements for access to and protection of classified information. (The Commission expects to adopt this proposed rule as a final rule in January of 1997.) These amendments were proposed to conform the NRC's regulations with the nationally applicable requirements for the protection of and access to classified National Security Information, which have been revised through the issuance of the National Industrial Security Program Operating Manual (NISPOM), published January 1995; Executive Order 12958, "Classified National Security Information," dated April 17, 1995; and Executive Order 12968, "Access to Classified Information," dated August 4, 1995. Specifically, as related to foreign ownership, control, or domination, the NISPOM provides criteria for determining whether U.S. companies handling classified material are under foreign ownership, control, or influence (FOCI). FOCI requirements established in proposed revisions to 10 CFR part 95 are considered useful to the subject finding the Commission must make under the provisions of the 1996 legislation. This is especially so based upon the sensitive nature of the facilities and USEC's role, and the fact that USEC will have access to classified information and equipment.

Further, the existing regulations (§§ 40.31(b), 70.22(d), and 76.33(d)) reflect NRC authority under the Atomic Energy Act to require that an applicant, licensee, or certificate holder submit additional information concerning issuance of a license or certificate. Therefore, under these provisions USEC also may be required to submit additional information addressing whether issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. The staff is considering whether there are specific additional information needs and will recommend to the Commission whether further amendments to the regulations are warranted. In addition the staff is preparing procedures for developing the required annual report to Congress and guidance for recertification, and developing procedures to consider the issues of foreign ownership and control, and inimicalness to the common defense and security and to a reliable and economical supply of domestic enrichment services. Specific

implementing amendments are as follows:

New sections 10 CFR 40.38 and 70.40 entitled "Ineligibility of certain applicants," are added to state that the NRC will not issue a license to operate an AVLIS enrichment facility to the Corporation if:

- (1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;
- (2) Issuance would be inimical to the common defense and security of the United States; or
- (3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

A new section 10 CFR 76.22 entitled "Ineligibility of certain applicants," is added that states that the NRC will not issue a certificate of compliance to the Corporation under these parts if:

- (1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;
- (2) Issuance would be inimical to the common defense and security of the United States; or
- (3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

Another provision in the legislation eliminates the requirement that the NRC must certify that USEC or its successor's operation of the gaseous diffusion plants is in compliance with NRC regulations each year. Instead, the Commission may determine how frequently the USEC or its successor must submit a recertification application to the NRC. However, NRC must recertify the Corporation's compliance at least every 5 years. The initial certification, granted in a September 19, 1996 Director's decision, was made effective for 2 years to permit most items of USEC's compliance plan to be completed. As part of the certification process, the compliance plan details how the Corporation will achieve compliance with NRC regulations in transition from the operation of the gaseous diffusion plants under the requirements of the Department of Energy to operation under the regulatory authority of the NRC. Subsequent recertification will be based on a number of considerations, including implementation status of compliance plans and certification regulatory experience as determined by the NRC's inspection program. The exact term of each certification will be specified in the certificate. As noted in a Senate Committee report on a previous version of the legislation (S. Rpt. No. 104-173 on S. 755, November 17, 1995, page 31), "With periodic certification,

the NRC would have the flexibility to determine the appropriate length of certification, not to exceed five years." Specific implementing amendments are as follows:

10 CFR 76.31 is revised to provide for periodic application for recertification of compliance on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

Accordingly, in 10 CFR 76.35, 76.36, 76.43, 76.45, 76.55, and 76.66 references to annual recertification are removed.

10 CFR 76.68 is revised to provide that the Corporation or its successor will continue to submit revised change pages to their approved application and safety analysis report annually to ensure current plant documentation, even though the requirement for an annual application has been removed.

In addition, in response to the "Rulemaking Plan—USEC Privatization Act," which was made available to the public on the NRC electronic bulletin board, USEC by letter dated November 13, 1996, provided comment concerning the rulemaking action (enclosure 3). In their letter USEC provided proposed revisions to CFR parts 76, 70, and 40 for the purposes of implementing the USEC Privatization Act, and proposed language to § 76.45 to clarify the agency's intention concerning Director's decision on applications for amendments to the Certificate. USEC also proposed deleting certain sections which in their view are immaterial now that the Director's decision on the initial certification has been issued. With respect to the first item, no new information was provided beyond that which the staff had already considered in this direct final rulemaking. The other USEC proposed revisions are not included as a part of this limited scope direct final rulemaking as they are not revisions to the Commission's regulations which are required by the legislative amendments to the Act being here codified.

The Commission is proceeding with this rulemaking to amend 10 CFR parts 2, 40, 70, and 76 as required to implement section 3116 of Pub L. 104-134. To conform with these changes to the Act, the amendments in this rule contain several new and revised AVLIS licensing and gaseous diffusion plant certification requirements specific to the Corporation's and its successor's operation of uranium enrichment facilities.

In summary, the amendments to 10 CFR chapter I are being made to:

- (a) Provide that uranium enrichment facilities will be licensed under 10 CFR

part 70, Domestic Licensing of Special Nuclear Material (See § 70.1);

(b) Add and amend where needed the definition of "Corporation" to include the USEC privatized entity (See §§ 40.4, 70.4 and 76.4);

(c) Note that the Commission will not issue a license/certificate if the Commission finds that USEC or its successor is under foreign ownership or control or that issuance would be inimical to the common defense and security or to the maintenance of a reliable and economical source of domestic enrichment services (See §§ 40.38, 70.40, and 76.22);

(d) Amend the provision concerning periodic recertification for operation (See §§ 76.31, 76.35(n), 76.36(a), 76.43, 76.45(a), 76.55, 76.66 and 76.68(b)); and

(e) Note and clarify the authority to issue civil penalties to USEC or its successor for regulatory violations (See §§ 2.200(a), 2.205(a), 76.10(b), 76.60, 76.72(d) and 76.131).

The NRC is also amending the regulations in 10 CFR part 76 to correct several miscellaneous errors in the regulatory text. These errors in the Code of Federal Regulations text occurred in the process of preparing and printing the final rule published on September 23, 1994 (59 FR 48944). Specifically: in § 76.21(b) the reference to § 40.41 should be to § 40.51; in §§ 76.111 and 76.113 "uncontrolled classified" should be "Unclassified Controlled" Nuclear Information, and in § 76.76(a)(2) the "(c)" should be "(b)." In addition, the definition of "Uranium enrichment plant" is removed from § 76.4 because it is neither needed nor used in part 76, which is specific to gaseous diffusion plants.

Furthermore, the NRC is amending the regulations in 10 CFR part 2 to reflect an agency reorganization. Specifically: in § 2.205 paragraphs (a), (d), (g) and (h) all references to the "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, or the Deputy's designee" are changed to read "Executive Director for Operations or the Executive Director's designee."

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The Bulletin Board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also

available, as practical, for downloading and viewing on the Bulletin Board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems

Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Procedural Background

The NRC considers this action noncontroversial and routine because it implements specific statutory requirements (Pub. L. 104-134). Therefore, the Commission is approving it without seeking public comments on proposed amendments. This action will become effective on April 14, 1997. However, if the NRC receives significant adverse comments by March 14, 1997, the NRC will withdraw this action and address the significant adverse comments received in response to the revisions published in this document before a final rule becomes effective. The NRC will not initiate a second comment period on this action.

Revision to NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions"

Concurrently with this direct final rule the Commission is publishing a document elsewhere in this issue of the Federal Register that amends NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Action" which provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the areas of fuel cycle and gaseous diffusion plant operations. The amendment is to Supplement VI, "Fuel Cycle and Materials Operations," which provides additional examples of violations that should be categorized at Severity Levels I, II, III, and IV. In addition, the Enforcement Policy is being amended to establish base civil penalties for GDPs. The policy recognizes that regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance (i.e., actual and potential consequences) and regulatory significance.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental

assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement for Direct Final Rule

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0020, -0021, -0009, -0039.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

Changes to 10 CFR parts 2, 40, 70, and 76 must be made to bring these regulations into conformance with the Act as amended by the "USEC Privatization Act" (Public Law 104-134). The chief benefit to the public, industry, and NRC will be derived from codification of NRC regulations to conform to the changes to the Act. Codification should result in a better understanding of the procedures and requirements for licensing and/or certification of enrichment facilities, and thereby facilitate the process for review of a license application for uranium enrichment facility, and possibly reduce the litigative risk that might result from not having the regulatory basis for health and safety review of the application codified by regulation. The principal cost will be the expenditure of NRC staff resources in codifying the requirements. This constitutes the regulatory analysis for the direct final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only addresses the Corporation or its successor. The Corporation does not fall within the scope of the definition of "small entities" set forth in 10 CFR 2.810 or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Small Business Regulatory Enforcement Act

In accordance with the Small Business Regulatory Enforcement

Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rules, 10 CFR 50.109 and 76.76, do not apply to this rule. Thus, a backfit analysis is not required for these amendments because they do not involve any provisions that would impose backfits as defined in §§ 50.109(a)(1) and 76.76(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set forth 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. 552 and 553; the Commission is adopting the following amendments to 10 CFR parts 2, 40, 70, and 76.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, I, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349, as amended (42 U.S.C. 2201 (b), (l), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70 of this chapter.

3. In § 2.205, paragraphs (a), (d), (g) and (h) are revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section

234 of the Act, the Executive Director for Operations or the Executive Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d) of this chapter. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to Section 234c of the Act.

* * * * *

(d) If the person charged with violation files an answer to the notice of violation, the Executive Director for Operations or the Executive Director's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

* * * * *

(g) The Executive Director for Operations or the Executive Director's designee, as appropriate may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Executive Director for Operations or the Executive Director's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Executive Director for Operations or the Executive Director's designee, as appropriate, may refer the

matter to the Attorney General for collection.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term "Corporation" is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to—

- (1) The common defense and security of the United States; or
- (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. 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, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1 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).

8. In § 70.1, a new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term "Corporation" is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to—

- (1) The common defense and security of the United States; or
- (2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349, (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term "Corporation" is revised to read as follows and the term "Uranium enrichment plant" is removed:

§ 76.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(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.

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to

the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must

contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its periodic application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Renewals.

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

19. Section 76.43 is revised to read as follows:

§ 76.43 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.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) *Contents of amendment application.* In addition to the 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 or acceptability for the proposed activities as required for the original certificate.

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1) and (d)(1) are removed and reserved and

paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

(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," as specified in subpart E to this part.

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

(c) If the Corporation does not submit a renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

(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. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or 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;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

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

* * * * *

27. Section 76.111 is revised to read as follows:

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

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation² for physical security and material control and accounting are contained in title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of

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

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, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

* * * * *

(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 of this chapter. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 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) 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 234 of the Atomic Energy Act of 1954, as amended, or 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 violations of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;

(2) Section 206 of the Energy Reorganization Act;

(3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;

(4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

Dated at Rockville, Maryland, this 6th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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