Sunshine Act Meetings

Federal Register

Vol. 59, No. 184

Friday, September 23, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 7, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23711 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 14, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23712 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, October 21, 1994.

PLACE: 2033 K St. NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23713 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

TIME AND DATE: 11:00 a.m., Friday, October 28, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–23714 Filed 9–21–94; 10:22 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 27, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendment to Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports," to rescind section 304.6 which currently requires all insured banks, with the exception of insured bankers' banks, to give the Corporation prior notice of planned rapid growth as a result of any "special funding plan or arrangement."

Discussion Agenda

Memorandum re: Recapitalization Schedule for the Bank Insurance Fund; Adequacy of the Bank Insurance Fund and Savings Association Insurance Fund Assessment Rates.

Memorandum and resolution re: Advance notice of proposed rulemaking which seeks comment on whether the deposit insurance assessment base currently provided for in the Corporation's regulations should be redefined and, if so, how.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would revise and expand the set of conversion factors used to calculate the potential future exposure of derivative contracts and recognize effects of netting arrangements in the calculation of potential future exposure for derivative contracts subject to qualifying bilateral netting arrangements.

Memorandum and resolution re: Proposed amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which would revise the Corporation's definition of equity investment to exclude treasury stock from the definition, thereby allowing institutions, in accordance with applicable Federal and state law, to acquire such stock and hold it for no longer than one year.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which concern delegations of authority for the newly-established Division of Compliance and Consumer Affairs, as well as other technical amendments relating to the new division.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 20, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–23727 Filed 9–21–94; 11:31 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:19 a.m. on Tuesday, September 20, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding an administrative enforcement proceeding.

Matters relating to the Corporation's supervisory activities.

Application of Knoblauch State Bank, Reading, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The Marian State Bank, Philadelphia, Pennsylvania, an insured State nonmember bank, and for consent to establish the sole office of The Marian State Bank as a branch of Knoblauch State Bank.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: September 20, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94-23728 Filed 9-21-94; 11:31 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 28, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's renovation project.
2. Proposals regarding the Federal Reserve System's Fednet project.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23725 Filed 9-21-94; 11:31 am]

BILLING CODE 6210-01-P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:30 a.m. on Monday, October 3, 1994, and at 9:00 a.m. on Tuesday, October 4, 1994, in Seattle, Washington.

The October 3 meeting is closed to the public (See 59 FR 46084, September 6, 1994). The October 4 meeting is open to the public and will be held at the Sheraton Hotel, 1400 Sixth Avenue, Seattle, in the West Ballroom.

The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

October 3–10:30 a.m. (Closed)

1. Consideration of:
   a. Capital Funding for MLOCRs. (William J. Dowling, Vice President, Engineering)
   b. Expense Funding for Credit/Debit Cards. (Michael J. Riley, Chief Financial Officer and Senior Vice President)
   c. Funding for the Relocation of the Information Systems Field Office in St. Louis, Missouri. (Rudolph K. Umscheid, Vice President, Facilities)

Tuesday Session

October 4–9:00 a.m. (Open)

1. Minutes of the Previous Meeting, August 29–30, 1994.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Board of Governors 1995 Meeting Schedule. (Chairman Sam Winters)
4. Office of the Governors FY 1995 Budget. (Chairman Sam Winters)
5. Fiscal Year 1995 Operating Budget. (Michael J. Riley, Chief Financial Officer and Senior Vice President)
6. Review of the Capital Investment Program. (Mr. Riley)
7. Report on the Western Area. (Craig G. Wade, Vice President, Western Area Operations)
8. Capital Investment.
   a. 120 Remote Bar Coding System (RBCS). (William J. Dowling, Vice President, Engineering, and Allen R. Kane, Vice President, Operations Support)
9. Tentative Agenda for the November 7–8, 1994, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 94-23779 Filed 9-23-94; 3:10 pm]

BILLING CODE 7710-12-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on October 3, 1994, in Seattle, Washington; consideration of a funding request for the relocation of the St. Louis, Missouri, Information Systems Field Office (See 59 FR 46084, September 6, 1994).

The Board determined that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determines that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code; and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 94-23780 Filed 9-23-94; 3:09 pm]

BILLING CODE 7710-12-M

federal register

Friday
September 23, 1994

Part II

Nuclear Regulatory Commission

10 CFR Part 19, et al.
Certification of Gaseous Diffusion Plants; Final Rule

NUCLEAR REGULATORY COMMISSION

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

RIN 3150–AE62

Certification of Gaseous Diffusion Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add a new part that includes the requirements for certification of uranium enrichment activities of the United States Enrichment Corporation (the Corporation) in its operation of the two gaseous diffusion plants that the Corporation is leasing from the U.S. Department of Energy (DOE). These two plants are known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively. These regulations are being promulgated to establish standards for the protection of the public health and safety from radiological hazards and provide for the common defense and security, including adequate safeguards. A number of conforming amendments are also being made to other NRC regulations. In addition, appendix A to part 95 is being removed, since this material is now available in a separate publication.

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6209; Mr. C.B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8174; or Mr. J.K. Everly, Office of Administration, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7048.

SUPPLEMENTARY INFORMATION:

Background

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

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

On February 11, 1994 (59 FR 6792), the Commission published a proposed new part 76 in the **Federal Register** for comment establishing requirements and procedures for the certification process by addition of this new part to chapter I of title 10 of the Code of Federal Regulations. In addition to the new part, a number of conforming changes to the provisions of Chapter I of Title 10 of the Code of Federal Regulations were also proposed which are necessary to implement the new part. The comment period expired on April 12, 1994.

The new 10 CFR part 76 is based upon comparable NRC requirements that have been in place for a number of years. The NRC believes these requirements are adequate and appropriate for the gaseous diffusion plants. The NRC will assume regulatory oversight authority after it completes the first certification process in late 1995.

Summary of Requirements and Analysis of Public Comments

The Nuclear Regulatory Commission is amending its regulations to add a new 10 CFR part 76 entitled, "Certification of Gaseous Diffusion Plants." This new part includes procedural requirements, generally applicable NRC health and safety standards, technical safety requirements, and safeguards and security requirements specific to the gaseous diffusion plants. The Commission will use the requirements included in this new 10 CFR part 76 to satisfy Energy Policy Act requirements. The certification requirements in this rulemaking include actions that are either required by the Act or required by the Commission's procedures to protect the public health and safety from radiological hazards, to provide for the common defense and security, and to ensure adequate safeguards. Because this action does not constitute a licensing action, many of the processes associated with issuance of a license do not apply in this certification action.

Twenty comment letters were received on the proposed rule and are available for public inspection, and copying for a fee, at the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. The comments on the proposed rule came from a variety of sources that included the Corporation, the Department of Energy, citizens' groups, industry representatives, other Government agencies, and legal firms. The comments and their resolutions are discussed below and, to the extent possible, are arranged under the identified section of the rule to which they are related.

A. General Requirements

The general requirements are based on and mainly derived from 10 CFR Part 70. Part 70 contains the requirements used by the Commission to license the possession and use of special nuclear material at major fuel cycle facilities for which the NRC has regulatory responsibility for protecting public health and safety and the common defense and security. Specific sections in this new part, which are based on 10 CFR Part 70 as modified for the certification process, include the following:

Section 76.1 *Purpose.* This section defines the purpose of 10 CFR part 76 to be limited to certification of the existing 40-year-old gaseous diffusion plants previously operated by the DOE.

A comment was received indicating that reference made to "life of the plant" should be changed to "duration of lease." The final regulation has been so changed.

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

Comments were received indicating that the rules should be clarified as only applying to operation of those portions of the diffusion plants leased to the Corporation. The appropriate changes to the rule have been made.

Section 76.4 *Definitions.* This section contains definitions of terms used in this part.

In response to comments received, several definitions have been added to, or revised in the final rule as follows:

Corporation. In response to a comment by the Corporation, the NRC agrees that the definition should be clarified to show the continued applicability of Part 76 to the operation of the gaseous diffusion plants after privatization of the Corporation if privatization were to occur.

Alert and Site area emergency. Definitions are added for consistency with other regulations.

Radioactive material. Added as requested for clarification.

Unreviewed safety question. This definition was suggested by DOE, and was added in response to comments by DOE and the Corporation, to clarify its use in § 76.68 as one factor in limiting changes that the Corporation can make without prior Commission approval.

Section 76.5 Communications. This section describes requirements for verbal and written submissions to the Commission.

No comments were received on this section.

Section 76.6 Interpretations. This section contains requirements for interpretations of these regulations that are authorized by the Commission.

No comments were received on this section.

Section 76.7 Employee protection. This section specifies activities that are protected and prohibits discrimination against an employee for engaging in protected activities.

Comments were received concerning the transition from operation under DOE orders to operation under NRC regulations. Specifically, it was suggested that various requirements for posting of NRC regulations and forms be delayed in some cases until after the NRC has taken action on the application. This section and § 76.60 have been modified to provide additional flexibility in the posting of notices by requiring posting not later than the date of the Director's initial decision on certification.

One commenter recommended that the final rule include a reference to activities protected by the National Labor Relations Act. The labor standards and/or statutes applicable to the Corporation are specified in section 1312(d) of the AEA. No further delineation of those standards and/or statutes is necessary for inclusion in NRC's certification regulations.

A comment was received expressing a perceived lack of willingness of the NRC to solicit comments from organizations that represent the plant workers. This rulemaking has been done under full public participation as required by NRC procedures within the time limits imposed by the legislation for transferring operation of the facilities to the Corporation. The certification procedure provides an opportunity for public participation at all stages of the process through written comments and participation in public meetings to be held near the sites.

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

No comments were received on this section.

Section 76.9 Completeness and accuracy of information. This section specifies that all information provided to the NRC must be complete and accurate.

No comments were received on this section.

Section 76.10 Deliberate misconduct. This section describes prohibited activities and states that violations are subject to enforcement action.

No comments were received on this section.

Section 76.23 Specific exemptions. This section specifies that the Commission may grant exemptions from the requirements in part 76 provided certain conditions are met.

A comment was received from the Corporation recommending that the rule be expanded to provide that the Commission may grant exemptions where certain "special circumstances" exist due to the "unique status" of the Corporation. The special circumstances presented included a request by the Corporation or DOE that an exemption would be in the 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 for the Corporation set forth in Section 1202 of the AEA. As proposed, § 76.23 already provides that NRC may grant exemptions and specifically includes consistency with the common defense and security of the United States as a prerequisite for granting an exemption. The NRC does not conclude that the Corporation's "unique status" introduces any additional considerations in considering requests for exemptions not already within the purview of § 76.23.

Section 76.65 Inalienability of certificates. This section sets forth the conditions for transfer of certification.

Comments were received that the proposed rule should address inalienability of certificates. This section has been added to the final rule.

Section 76.76 Backfitting. This section sets forth the conditions for requiring backfitting of the plants and establishes backfit guidelines. Backfitting is defined as any NRC-required modification or addition to systems, structures, or components of the facility, or procedures or organizations used to operate the facility.

Commissioner Rogers was particularly interested in comments on two issues regarding the provisions of this section: (1) Whether the provisions of § 76.76 should become effective immediately when 10 CFR part 76 becomes final, as would happen were the proposed section to remain unchanged, or whether there should be some interim period before these provisions become effective (e.g., until completion of the first annual certification following initial certification) and; (2) Whether the standard for requiring a backfit should be that of § 76.76(a)(3), "* * * a substantial increase in the overall protection of the public health and safety or the common defense and security * * *" or the less stringent standard of cost-effectiveness that is contained in section 1(b)(6) of Executive Order 12866 of September 30, 1993, "* * * a reasoned determination that the benefits of the intended regulation justify its costs."

A number of commenters agreed that the provisions of § 76.76 should be made effective when the rule becomes final. There were no comments received in support of a delay in the implementation of the backfit provisions. However, the Ohio Citizens for Responsible Energy opposed the application of the proposed backfit requirements to these facilities. They commented that: (1) Operations have not been trouble-free and environmentally benign, (2) the NRC has no previous experience with these plants, (3) the backfit rule would essentially "freeze" the plant design and operational practices, and (4) the NRC must be free to demand changes in the design and operation of these plants. They further commented that if the NRC establishes any backfit standard it should be the standard of Executive Order 12886: "a reasoned" determination that the benefits of the intended regulation "justify its costs."

The Corporation, DOE, and the Nuclear Energy Institute agreed with incorporation of the backfit provisions as written. The Corporation specifically supported the rewrite of 10 CFR 50.109, as proposed, as being consistent with NRC practice.

In response to the comment suggesting that the proposed backfit provisions would prevent the Commission from taking action as is required to protect public health and safety, the Commission does not apply backfit provisions in a manner which would inhibit imposition of requirements necessary to achieve an adequate level of safety. Under the backfit requirements in the final rule, costs are considered only for determining the need to impose requirements that provide for enhanced levels of safety that go beyond those basic requirements needed to provide adequate protection of the public health and safety.

The final rule requires a cost benefit analysis for any new requirement or NRC staff position unless the modification is required to bring the facility into compliance with written rules or orders, or into conformance with written commitments by the Corporation, or if the change is necessary to ensure that the facility provides adequate protection of the public health and safety. The final rule is unchanged.

Section 76.81 Authorized use of radioactive material. The section sets forth requirements for the Corporation's possession and use of radioactive material.

The Corporation commented that it wants language in the regulations which would authorize it to receive, possess, own, acquire possession of, and use radioactive materials in places and for purposes not covered by the certificate, if otherwise authorized by law. Such authorization would not be part of certification and would involve approval by other Federal agencies. This comment goes beyond NRC's authority with respect to certification of the gaseous diffusion facilities. To the extent that the Corporation wants NRC to approve activities associated with radioactive materials involving other locations and other activities, other locations and activities are not included in the certification authority contained in the AEA, as amended by the Energy Policy Act. The final rule has been revised to make clear that to the extent the Corporation engages in activities not covered by the certification process, it may do so as long as it complies with all applicable State and Federal regulations.

Section 76.83 Transfer of radioactive material. This section contains requirements for the Corporation's transfer of radioactive material.

DOE recommended that the provision of § 76.83(d)(3) concerning emergency shipments be deleted as they are not defined and continued implementation of current DOE practices provides methods for shipment of material outside the normal process. This comment was not adopted and the section was retained to provide the flexibility for such transfers under NRC certification in the event it would be needed and is not inconsistent with current NRC practices.

Section 76.89 Criticality accident requirements. This section contains monitoring requirements for criticality accidents.

Commenters requested that § 76.89 be revised to specifically state that certain areas do not require criticality alarms: (1) Areas containing less than 700 grams of U–235 contained in uranium of any enrichment, (2) areas containing less than 1500 grams of U–235 contained in uranium enriched up to 4%, (3) areas containing less than 1400 grams of U–235 contained in uranium enriched up to 5%, (4) areas where special nuclear material is packaged and stored in approved containers and in isolated arrays in compliance with 10 CFR part 71, and (5) process buildings containing homogeneous uranium material enriched to less than 1%. The NRC does not intend to require monitoring for areas where quantities of enriched uranium are controlled so that a criticality accident is not credible. Rather than attempting to specify quantity limits, the rule was modified to include a generic provision such that criticality alarms will not be required for such controlled areas.

Section 76.91 Emergency planning. This section contains emergency planning requirements.

Some commenters agreed with the emergency planning provisions as proposed. Others recommended that the emergency planning provisions be revised. A commenter's proposed changes were to (1) add a "general emergency" category to the classification of accidents, (2) give annual briefings and tours to fire, police, medical, and other emergency personnel, (3) conduct annual drills in addition to the proposed annual exercises, and (4) add separate sections to emergency planning documents that address the emergency operations center and public notification of basic emergency planning and information in emergency planning zones. A commenter also suggested that the proposed language would permit individuals to evaluate their own performance in the required biennial exercise, rather than have an independent and impartial evaluation.

The emergency planning provisions in 10 CFR part 76 are essentially those of 10 CFR part 70. Adoption of these comments would result in emergency planning requirements similar to those in place at nuclear power plants. The nature of the postulated accidents that are considered in emergency planning for nuclear power plants would be substantially different from those that would be involved in emergency planning for the gaseous diffusion plants. The regulatory analysis for the emergency preparedness requirements contained in Part 70 evaluated the risks associated with the release of UF_6 and concluded that offsite emergency preparedness should be based on chemical toxicity from a large UF_6 release. The current part 70 requirements are considered adequate for these facilities, therefore, these additional measures were not adopted.

One commenter concluded that § 76.91, "Emergency Planning," does not provide for any offsite emergency planning except for a minimal notification procedure to offsite response organizations and a request for offsite assistance, and that this omission implies that no offsite consequences will occur. Actually, the rule requires considerable coordination with offsite organizations, including offering opportunities for orientations and participation in exercises. Although there is a small risk of an incident which may require an offsite response, the NRC believes the nature of these incidents is such that State and local governments can be expected to respond in an adequate manner whether or not there are any formal written emergency plans for offsite releases.

Section 76.120 Reporting requirements. This section contains requirements for 1-hour notification, 4-hour notification, 24-hour notification, and for preparation and submission of reports.

One commenter recommended deletion of "general emergency" to make the language of the requirement consistent with that of § 76.91(c). Because there was no intent of including a general emergency class, this correction was made.

Another commenter recommended changing "or" to "and" between paragraphs (c)(1)(ii) and (iii), and between paragraphs (c)(2)(ii) and (iii). This change was adopted as being the intent of the proposed rule and to be consistent with 10 CFR parts 30, 40, and 70.

One commenter recommended changing the language in § 76.120(c)(1)(iii) from "to decay to a level that would allow decontamination" to "to decay prior to decontamination." This change was adopted for consistency with part 70.

The Corporation suggested that § 76.120(c)(2) could be changed to provide that the failure of equipment required by an operational safety requirement to perform certain functions should be reported to the NRC. The NRC agrees with the intent of the suggestion but will use the technical safety requirement for consistency of terminology. The appropriate changes have been made to the final regulation. The comment also recommended deletion of the requirement for reporting equipment failure in the case of equipment required to restore the facility to a preestablished safe condition. This suggestion was not adopted. The requirement is needed to ensure that the NRC is aware of instances when facility safety during shutdown and restart could be threatened.

The Corporation suggested a modification to § 76.120(c)(3) to reflect that both GDPs have onsite medical facilities that negate the need for reporting radioactive contamination of personnel. This suggestion was not adopted. The purpose of the requirement is to make the NRC aware of any event in which a worker needs medical attention, either onsite or offsite, due to radiological contamination.

The Corporation suggested the deletion of the record or log requirement in § 76.120(d). The NRC maintains telephone event report logs in its database system and written reports submitted on emergency actions carried out in response to an emergency plan activation. There is no health and safety benefit to be gained by the Corporation maintaining an additional log for two years after an event. Therefore, the final regulation has been changed as suggested.

One commenter suggested that the proposed verbal and written reporting requirements should be modified to be consistent with the current part 70 requirements and that the same language should be used. This suggestion was not adopted. The proposed new language only clarifies what is already required by the current wording of 10 CFR 20.2201, 20.2202, 70.50, and 70.52.

Section 76.121 Inspections. This section states that the Corporation shall afford the Commission opportunity for inspection and that office space for Commission inspection personnel must be provided.

No comments were received on this section.

Section 76.131 Violations. This section specifies actions the Commission may take to prevent a violation, such as obtaining a court order, and contains civil penalty provisions.

A commenter asserted that the proposed rules do not include enforcement provisions. The post issuance provisions in § 76.70 pertain to revocation, suspension, or amendment for cause. Revocation of a certificate or approved compliance plan would be an extremely severe sanction and, quite arguably, the most severe possible sanction for the Corporation. In addition, § 76.60 makes 10 CFR Part 21 (Reporting of Defects and Noncompliance) applicable to the gaseous diffusion plants, and § 76.22(d) includes provision for civil penalties for violations of 10 CFR part 21. Section 76.131 pertains to violations and provides for the Commission to seek an injunction or other court order to prevent a violation of the regulations and to seek an order for payment of a civil penalty for violation of Section 206 of the Energy Reorganization Act of 1974 (relating to reporting of defects and noncompliance). The commenter also indicated difficulty in determining what criminal penalties apply when examining § 76.133 and the citations therein. Section 76.133(b) identifies those sections of part 76 for which criminal penalties do not apply. As set forth in Section 223 of the AEA, as amended, the general penalty for such violation, upon conviction, is punishment "by a fine of not more than $5,000 or by imprisonment for not more than two years, or both." The rule was not changed.

Section 76.133 Criminal penalties. This section specifies criminal sanctions for violations. For purposes of section 223 of the AEA which provides for criminal sanctions, the regulations in 10 CFR part 76 for which criminal penalties apply are issued under sections 161b, or 161i. The sections for which criminal penalties do not apply are listed in § 76.133(b).

The Corporation agreed that criminal sanctions could be imposed for violations of part 76 regulations issued under sections 161b or 161o of the AEA because these sections give the Commission authority to issue regulations to govern the possession and use of special nuclear material. However, the Corporation indicated that part 76 regulations could not be issued under section 161o of the AEA, and therefore, section 161o should be removed as a potential basis for criminal sanctions under § 76.133 and other NRC regulations (e.g., 10 CFR 19.40) made applicable to the Corporation. The Corporation reasoned that the activities regulated in part 76 do not constitute licensed or other activity within the scope of 161o.

The Commission agrees that 161o of the AEA applies to licensed and other activities that are not the subjects of the regulations in part 76. Therefore, § 76.133 has been revised by deleting section 161o as an authority for the issuance of regulations in part 76 and imposition of criminal sanctions under section 223 of the AEA. The Commission does not believe that it is necessary to revise the "Criminal Penalties" sections of other parts that apply to the Corporation because the references to 161o as one of the non-exclusionary bases for issuance of regulations in the other parts also apply to actions of licensees and other persons engaged in activities within the scope of 161o.

B. Procedural Requirements

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

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

Section 76.21 Certificate required. This section contains the requirement that the gaseous diffusion plants may not be operated without a certificate of compliance or an approved compliance plan.

A comment was received concerning operation of the GDPs between the time the NRC issues the standards and issues a certificate or approves a compliance plan. The Corporation'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, has been clarified.

A commenter stated the belief that the Corporation should not be able to operate the facilities without a certificate of compliance. This view appears to be based on a misunderstanding of the AEA. Section 1403 of the AEA requires that the Corporation lease the facilities for a period of 6 years, which commenced on July 1, 1993 (see also section 1314(e)), but section 1701 also gave the NRC 2 years from October 24, 1992, for establishment of standards under which the NRC would then determine whether to certify compliance with the standards. During the interim period, DOE has oversight responsibility for the GDPs until the NRC establishes its standards and completes the first certification process.

In response to another comment, the rule has been revised to permit receipt of radioactive material under either a certificate or an approved compliance plan.

Section 76.31 Annual application requirement. This section specifies the date by which the annual application must be filed. The initial certification would be based on review of an application submitted by the Corporation. The initial application would contain a complete description of operations, a safety analysis, and other information required to demonstrate compliance with NRC requirements. Subsequent applications could reference previously submitted information. For annual reviews after the initial certification, the Commission would focus on new information and changes from the previous year and public comments. The Commission anticipates that it will perform a complete review, similar to that performed for the initial certification, every 10 years.

The footnote concerning the date for submission of the initial application has been changed in response to a comment from the Corporation to provide at least 6 months for submission of the initial application after the rule becomes effective.

Section 76.33 Application procedures. This section contains filing requirements and specifies the required contents of the application.The rule requires any application which contains restricted data, classified national security information, unclassified controlled nuclear information, safeguards information, or proprietary or other withholdable data to be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

The Corporation stated that the word "identifiable," used in § 76.33(c)(2) to describe areas of noncompliance, was unclear and should be revised to be "identified" as stated in other NRC regulations (*e.g.*, 10 CFR 21.1 and 70.9(b)). They indicated that it is not clear how the NRC would determine whether a particular noncompliance to be addressed in a compliance plan was "identifiable." The NRC agrees that this word is ambiguous, and it has been changed to "identified" in the final rule as stated in 10 CFR 20.1 and 70.9(b).

Several comments were received concerning the environmental aspects of the certification process and existing environmental conditions at the facilities including the presence of contamination due to transuranics and their daughters. The Department of Energy prepared an Environmental Impact Statement for the Portsmouth gaseous diffusion plant in 1977 and an Environmental Assessment of the Paducah facility in 1982. The NRC has reviewed those documents, as well as environmental reports prepared by DOE for both facilities in 1992 and environmental audits prepared by DOE prior to turning operation of the Facilities over to the Corporation in 1993. The NRC also conducted extensive site visits. No significant differences in operations, previously evaluated by DOE, were identified that would result in current operations having significantly different environmental effects than those already evaluated in DOE's environmental reviews. In addition, any known quantities of transuranics or their daughters at facilities under the NRC regulatory certification process most likely came from the processing of recycled uranium in the past. The Corporation will be required to provide for adequate protection of public health and safety as a result of operations at the leased facilities, including releases of effluents to the environment as specified in § 76.60(d) that is based on the regulations in 10 CFR part 20. As established by the Act, the NRC will issue a certificate only for the current operations of the facility and will not evaluate preexisting conditions. All preexisting conditions are outside of NRC authority. In consideration of this limited authority, this section was changed to only require submittal of additional information that deviates from DOE-published environmental documents for these facilities. Also, in this regard, the Act requires the Director, as specified in § 76.53, to consult with the Environmental Protection Agency (EPA) on applications for certification.

The NRC has reviewed comments concerning decommissioning and existing site environmental contamination. The NRC is currently working with the EPA in establishing standards for the decommissioning of nuclear facilities. These EPA standards will be applied in the decommissioning of these plants.

Several commenters responded to the requirement concerning separation of certain material, such as classified or proprietary material, from the information to be made available to the public. This requirement conforms to other NRC regulations on the separation of submitted information. The special handling of the specified material is required to protect information that could be detrimental to national or facility security and the Corporation's business. In appropriate cases, the Commission has procedures to permit access to the material for individuals who have been properly cleared and are bound by law to protect the information.

The Corporation suggested that the proposed rule be modified in several places to state that the Corporation need not describe procedures for special nuclear material where the function is the responsibility of DOE. The NRC recognizes that the Corporation will not control all activities at the enrichment plant sites, and that DOE will continue to conduct certain activities involving enriched uranium at sites which are outside of NRC jurisdiction. Any interaction between DOE and the Corporation-leased facilities will be carefully monitored by NRC to assure that safety and safeguards requirements are met by the Corporation. However, the suggested rule changes were not adopted because it is inappropriate for the rule to attempt to address DOE activities which fall outside NRC jurisdiction.

Also, in response to a comment, the final rule requires more detailed information about the Corporation's management structure similar to that required by part 70.

Section 76.36 Annual renewal. The Corporation requested a change in format regarding contents of applications for the purpose of increased clarity regarding the precise scope of the initial application and of renewal applications. Included in the proposed restructuring was revision of proposed § 76.35 pertaining to contents of applications so as to limit its scope to the contents of the initial application. The Corporation also recommended the addition of a new § 76.36 so as to set forth the precise content of the annual resubmittal.

The NRC agrees that revisions to specifically address the renewal procedures would add clarity to the prescribed content of the initial and renewal applications. As a result, the final rule adds a new Section 76.36 to address required contents for annual renewal applications and identifies the information that must be submitted for annual review following the initial certification action. This new section clarifies and confirms that the Corporation may, as part of its application for renewal, either submit the information specified in § 76.35 pertaining to the initial application or rely upon the application(s) upon which the existing certificate is based and identify any pertinent changes or proposed changes as specified in § 76.36(c)(2). The provision permitting incorporation of previous submissions by clear and specific reference has been moved from proposed § 76.33(f) to § 76.36(b).

Section 76.37 **Federal Register** notice. This section describes the public notice on a filing of an application, provides an opportunity for public comment, and indicates the date of any public meeting.

Ohio Citizens for Responsible Energy (OCRE) requested that the Commission provide at least an 80-day period for public comment on the initial application for a certificate and for complete review of renewal applications that is intended every 10 years. OCRE views the proposed 30-day period as too brief for learning through publication in the **Federal Register** of the filing of an application and to respond to such a complex matter.

Another commenter, the Central Mid-West Interstate Low-Level Radioactive Waste Commission, recommended that the Commission provide for at least a 60-day period for public comment on an application for initial issuance or renewal of a certificate.

Section 76.37 does not specify the time period which will be afforded for public comment on an application. However, the Commission has indicated that it plans to provide at least a 30-day comment period (February 11, 1994; 59 FR 6797). In light of the comments received, the Commission has determined, as a matter of policy, that it intends to provide a comment period of at least 45 days. However, the Commission cannot assure that any longer public comment period will be provided in light of the need for an expeditious determination of the application on an annual basis, including NRC staff review of the application and public comments, preparation and issuance of the Director's decision, and consideration of petitions for review by the Commission.

The Commission notes that it has provided for the annual filing of an application by a specific date and that it will promptly make a copy of the application available in local public document rooms near the gaseous diffusion plants. These aspects of the certification process should enhance the ability of the public to provide comment on the application.

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

Ohio Citizens for Responsible Energy (OCRE) requested that the regulations require a public meeting on the initial certification process and for the complete review that the NRC anticipates performing every 10 years.

The final rule, as did the proposed rule, provides that a public meeting will be held if the Director, at his or her discretion, determines that a meeting is in the public interest with respect to a decision on the application. The NRC has already indicated, as a matter of policy, that a public meeting will be held on the initial certification application. The Commission continues to be committed to holding such a meeting. The scope of the Commission's review and public expression of interest in a public meeting will be important factors in the Director's decision on whether a meeting on any certificate renewal is in the public interest.

However, it is not clear that a public meeting will be necessary on any annual renewals. Commenters on an application may request a public meeting on annual renewals. The Director, NMSS, will consider these comments in making a determination of whether a public meeting is in the public interest.

OCRE also requested that the NRC provide persons whose interests may be affected by operation of the facilities with the opportunity for a formal adjudication to contest a certification and ensure correction of past problems.

The Commission has not made provision for a formal adjudicatory hearing on a certification decision whenever requested by a person whose interests are adversely affected. Public notice, opportunity for written comment, and opportunity to petition the Commission regarding a Director's decision should provide a fair and efficient procedural process for public participation in the certification decision. It must be recognized that Congress explicitly provided for a certification process in lieu of licensing requirements and did not specify any particular procedures for the certification process. However, in addition to the specific procedures which the Commission is providing, the Commission has also made clear its discretion to adopt by order further procedures that it determines would serve the purpose of the Commission's review of the Director's decision (§§ 76.62(c) and 76.64(c)).

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

No comments were received on this section.

Section 76.43 Annual date for decision. This section describes the timing of the annual decision on the application by the Director, NMSS, to be made within 6 months of receipt of the application.

No comments were received on this section.

Section 76.45 Application for amendment of certificate. This section states the procedures to be followed by the Corporation in applying for an amendment of a certificate before the established date of the next application for a certificate.

DOE commented that applications for amendment should be submitted by the Corporation under oath or affirmation. The Commission has included this change in the final rule.

Section 76.51 Conditions of certification. This section states that the Corporation shall comply with all requirements set forth and referenced in part 76, or in a certificate of compliance, or in an approved compliance plan.

In one of its comments, the Corporation requested that this section be revised to permit the Corporation to modify its programs for material control and accounting, 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 permission is already granted in § 76.68 of the proposed rule. That section permits the Corporation to make changes to the plant or the plant's operations without prior Commission approval provided certain conditions are met.

In another comment, the Corporation suggested various retention periods for records of changes to material control and accounting plans made without prior Commission approval and for records of changes to security and safeguards plans made without prior Commission approval. Requirements for retention of these kinds of records are addressed in the proposed § 76.68(d). The record retention period for procedural-like changes is standardized at two years and is shorter than the periods proposed by the Corporation. Records of changes to the plant must be retained for the duration of the lease. The Corporation comment did not explicitly address retention of records of changes to the plant. The required period is deemed justified because it is important to both safety and safeguards to have available records describing the current and past plant configurations.

A final comment from the Corporation on this section suggested a schedule for informing the Commission of various kinds of changes made without prior Commission approval. The submission requirement is addressed in § 76.68(b). The time allowed has been extended from 90 days in the proposed rule to annually in the final rule. The annual submission date allows more time for submission than any of the Corporation's suggestions. The annual submission date could coincide with the annual application and is justified by the continuing presence of an onsite NRC resident inspector who would be aware of the changes.

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

No comments were received on this section.

Section 76.55 Timely renewal. This section states that timely filing of an application for a certificate of compliance will maintain in effect any existing certification or approved compliance plan effective until issuance of a final decision on the application. This addresses the unlikely situation in which the Commission is unable to make the required annual determination regarding an application for a certificate of compliance despite timely filing of the application. In this case, the Commission will deem its prior determination regarding compliance effective until final resolution of the subsequent application and will advise Congress annually as required under Section 1701(b) of the AEA.

The Corporation requested that the provision on timely renewal be modified by providing that an existing certificate of compliance or approved compliance plan not expire until the annual application for a certificate of compliance "has been finally determined by the Commission" rather than at the time of the Director's determination of the application. The Corporation also requested that the condition of timely filing of "a sufficient annual application" be changed to timely filing of "an annual application in proper form."

The Commission agrees that an existing certificate or approved compliance plan should not expire until a final determination is made by the agency on the renewal application for the certificate. The final rule has been revised accordingly. The Commission intends that a certification process will normally be completed on an annual basis in the absence of extraordinary or unusual circumstances preventing the completion of the process.

The final rule has been revised to clarify that the Corporation will not be penalized if NRC does not complete the certification process expeditiously. However, the Corporation must timely file a sufficient application that addresses all the elements in § 76.36 for the Commission's determination. NRC staff questions regarding information provided in the application will not cause an application to be judged insufficient.

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

One commenter suggested that in several places the phrase "shall demonstrate compliance" should be changed to "shall comply." The NRC agrees with this comment and has changed the final regulation.

The Corporation requested that the rule be changed to allow two years to convert administrative and procedural elements of its radiation protection program to meet the standards for protection against radiation contained in 10 CFR part 20. DOE commented that the implementation of part 20 requirements should be based upon a schedule that achieves implementation in a timely, cost-effective manner. Although the Corporation agreed that the dose limits should become immediately effective upon receipt of the certification or an approved compliance plan, they provided no information on how they would be capable of implementing the dose limits without procedures or administrative controls in place. The requested two-year extension could mean that the elements of part 20 would not be in place until late 1996. The Commission recognizes that although there will be significant effort required to implement part 20, sufficient time is available for the Corporation to begin to implement these requirements. If the Corporation is unable to complete development of the appropriate procedures and administrative controls, including training before the date of the NMSS Director's decision, any remaining activities should be presented as a part of a compliance plan. In addition, the Corporation expressed concern with obtaining National Voluntary Laboratory Accreditation Program (NVLAP) approvals. Because NVLAP testing occurs every 3 months and the facilities possess Department of Energy Laboratory Accreditation Program (DOELAP) certification, there should be no difficulty in obtaining NVLAP accreditation before the NMSS Director's decision.

Another comment noted that until the initial certification, DOE has the regulatory oversight authority over the gaseous diffusion plants (GDPs) and, therefore, the implementation date for 10 CFR parts 19 and 21 should coincide with issuance of the initial certificate, rather than earlier as in the proposed regulation. The NRC agrees with this comment, and the regulation has been so changed.

Louisiana Energy Services (LES) raised the issue of requiring, through part 76, that the Corporation maintain liability insurance comparable to that required by 10 CFR part 140 for uranium enrichment facilities. The provision cited by LES, 10 CFR 140.13b, is based on section 193 of the AEA. This section specifically requires that the NRC require, as a condition of licensing any enrichment facility, that liability insurance be maintained by the licensee sufficient to cover liability arising from operations at the licensed facility. The legislation establishing the Corporation specifically provides that Price-Anderson indemnification will be provided by the Department of Energy under Section 170d of the Atomic Energy Act of 1954, as amended (AEA) for the gaseous diffusion facilities leased to the Corporation by the DOE. Further, Section 170a of the AEA provides that NRC may require financial protection for facilities licensed under sections 53, 63, 81, 103, 104, and 185. The certification process does not constitute issuance of a license within any of these sections of the AEA. Accordingly, it is the Commission's conclusion that requiring additional NRC mandated liability insurance for the Corporation's operations is neither appropriate nor necessary.

One commenter recommended the inclusion of the reference to 10 CFR part 95 that covers security and safeguarding information in this section for consistency as other regulations which apply are listed. The NRC agrees with this comment and the final regulation has been so changed.

Several commenters expressed concerns about the applicability of Environmental Protection Agency regulations in 40 CFR parts 61 and 190, noting that although 10 CFR part 20 incorporates 40 CFR part 190, 10 CFR part 76 did not explicitly reference 40 CFR part 190. The NRC notes that because the Corporation is required to comply with 10 CFR part 20, it must also comply with 40 CFR part 190, and 40 CFR part 61, Subpart H, and that explicit references in part 76 are not necessary.

One commenter noted that certain of the existing regulations referenced by the proposed rule provided for the imposition of civil penalties but contended that authority for the NRC to issue a civil penalty is not included in the Energy Policy Act. The NRC agrees with the comment and the final rule has been revised to delete the civil penalty provisions.

Section 76.62 Issuance of certificate and/or approval of compliance plan. This section specifies that the Director, NMSS, will issue a written decision on the Corporation's application and states that the Corporation or affected members of the public who have provided comments in the proceeding may seek the Commission's review of the Director's decision.

The Corporation recommended that this section be revised to clarify that a certificate and a compliance plan are not exclusive of the issuance of the other. They also expressed concern that the proposed language might be interpreted to require the Director to withhold the certificate of compliance in its entirety if there are any outstanding areas of noncompliance. They requested that the language of the proposed rule be modified to explicitly state that a certificate of compliance would be issued for all areas of full compliance and a compliance plan for areas of current noncompliance. The Commission agrees that it may issue a certificate of compliance covering those areas where the Corporation is in compliance with applicable requirements and the Commission may also approve concurrently a compliance plan for areas of noncompliance. This section is modified to clarify this intent.

The Corporation requested modification of proposed § 76.62(c) to provide that petitions for the Commission's review of a Director's decision to issue a certificate and/or approve a compliance plan "shall be limited to matters raised in the petitioner's written or verbal comments." The Commission declines to limit petitioners for Commission review to matters raised in that petitioner's previous written or verbal comments. A Director's decision on a certificate or proposed compliance plan may respond to issues raised by other commenters or include provisions that a commenter did not anticipate. For these reasons, those persons whose interests may be affected and who submitted written or verbal comment on an application will be permitted to seek Commission review of the Director's decision.

One commenter, OCRE, felt that the 15-day period (from the date of **Federal Register** Notice) for filing a petition for Commission review of a Director's decision to grant or deny a certificate, or approve or disapprove a compliance plan, was too short. OCRE requested that this 15-day period be extended to at least 25 days. It stated that some commenters, particularly individuals and public interest groups that depend upon libraries for access to the **Federal Register**, may not learn of the Director's decision within 15 days unless the Director's decision is provided to all commenters on the application for a certificate.

The Corporation stated that the 15-day period for filing of a petition for review of a Director's decision to deny a certificate or not approve a compliance plan was too short and requested at least 30 days to file such a petition. The Corporation also recommended that the rules provide that a Commission decision denying an application for a certificate or disapproving a compliance plan must state that it does not become effective until at least 10 days after the date of the decision. In support of these recommendations, the Corporation stated that a denial could have a significant impact on it and may have potential implications for national and public policy because the gaseous diffusion plants supply 40 percent of the world market and 90 percent of the domestic market for enriched uranium and are currently the sole domestic source of enrichment services.

Both the Corporation and OCRE felt that the 10-day period from the date of filing a petition for review for responding to a petition for review was too short. The Corporation requested that this 10-day period for filing responses to a petition for review be extended to 30 days because of the burden and prejudice that might occur if the Corporation were faced with multiple petitions.

OCRE requested that this 10-day period for responding to a petition be lengthened to at least 20 days. To ensure adequate notice to interested commenters, OCRE requested not only service of the Director's decision on commenters but also a mechanism for ensuring that commenters could receive timely notice of a petition for review. OCRE observed that the cost of requiring a petitioner to serve all commenters could be prohibitive and suggested a remedy such as a telephone information line with recorded information on the case or a computerized bulletin board system.

The Commission recognizes that the time periods for filing of a petition for Commission review and responding to a petition for review are relatively short. The Commission's flexibility in the timing of the certification process is limited, as noted above, because of the need for an expeditious determination of the application on an annual basis, including staff review of the application and public comments, preparation and issuance of the NMSS Director's decision, and consideration of petitions for review by the Commission.

The Commission will promptly make copies of an application for a certificate or approval of a compliance plan available in local public document rooms at or near the gaseous diffusion plants and will issue a press release at the time the Director's decision is issued. The Commission also intends to make promptly available copies of all **Federal Register** notices relating to the certification process, as well as petitions for review, and responses to petitions for review at those locations. In addition, the NRC staff will examine the feasibility of establishing a computer bulletin board to provide information on the application's status.

For these reasons, the Commission has not altered the time periods for filing of petitions for review or responses thereto. However, the Commission has added § 76.74 to the final rule that clarifies the computation of designated time periods and confirms the Commission's ability to extend or shorten time periods for action for good cause. Therefore, the Commission may be able to provide some extension of the period for filing of petitions and responses if time permits during the period of a particular certification process.

The Commission declines to specify by regulation that a decision denying an application for a certificate or disapproving a compliance plan must state that it does not become effective until at least 10 days after the date of the decision. The Commission has determined that binding itself to such a delay would be inappropriate in emergency circumstances.

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

In response to a comment, this section is revised to clarify that the compliance plan is a DOE document.

Section 76.66 Expiration and termination of certificate. The Corporation requested that the NRC add a new section to the final rule which would address expiration and termination of certificates.

The Commission agrees that these provisions are useful. Thus, a § 76.66 has been added to the final rule. Paragraph (a) clarifies that "except as provided in § 76.55 [timely renewal], a certificate expires at the end of the day, in the month and year stated." Paragraph (b) adds a requirement of prompt notice to the Commission when the Corporation decides to terminate operation of either of the GDPs and other authorized activities under the certificate. Paragraph (c) clarifies that the Corporation must terminate operations on or before the expiration date in the existing certificate if it does not submit an application for renewal of the certificate.

Section 76.68 Plant changes. This section describes plant or operational changes by the Corporation permitted without prior Commission approval. Documentation of these revisions must be submitted to the NRC. To make other changes would require Commission approval and would require the Corporation to apply for an amendment of the certificate under § 76.45.

Several comments were received concerning this section. The Commonwealth of Kentucky commented that the Corporation should not be allowed to make changes without modification of their certificate. Another commenter stated that the section should be preserved as written and incorporated into 10 CFR Part 70. The Corporation commented that the proposed section is overly restrictive and should be closely modeled after 10 CFR 50.59. The Department of Energy (DOE) recommended changes that would make it consistent with current DOE Orders.

As written, § 76.68 permits changes similar to those permitted under 10 CFR 50.59 for reactors and provides flexibility that is beyond that currently provided for in 10 CFR part 70. Because these plants will not have technical specifications as referenced in 10 CFR 50.59, the detailed criteria for evaluation of changes permitted without prior Commission approval are needed in § 76.68. The Commission does not believe the evaluation provisions are overly restrictive as suggested by the Corporation and the evaluation provisions are retained.

Comments were also received concerning the requirement that reports describing changes made under this section be submitted within 90 days of their adoption. The final rule has been changed to conform with 10 CFR 50.59 and thus requires that the information on changes be submitted annually or at shorter intervals as specified in the certificate.

The Commission believes that the clarified final rule will permit changes that do not decrease safety and still provide the Corporation flexibility in the operation of the facilities. The Commission has not deleted this section as requested by one commenter because the procedures contained in this section ensure that those changes which are permitted will not be in conflict with any certification requirements.

Still another comment on § 76.68 requested that the term "unreviewed safety question" be defined. The NRC has no objection to this definition and has added a definition similar to the usage of the term in 10 CFR 50.59.

A comment from DOE was also adopted that requires the Corporation to evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with this section. This comment was adopted to ensure that any exceptions to what is assumed or understood are evaluated.

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

The proposed rule provided that the Commission would provide "the Corporation and other interested persons with an opportunity to provide written views to the Commission" in connection with a proceeding to amend, revoke, or suspend a certificate of compliance or compliance plan. The proposed rule also provided that the Commission "may adopt by order further procedures for a hearing of the issues before making a final enforcement decision."

In its comments, the Corporation requested that participation in these enforcement actions be limited to persons whose interests may be "adversely affected" by the proposed enforcement action. The Corporation indicates that this change would make public participation rights more consistent with those applicable to similar enforcement proceedings for NRC licensees. In particular, the Corporation seeks to ensure that the NRC would preclude participation in an NRC enforcement action by persons seeking more stringent enforcement action than is proposed by the Commission.

The Commission does not believe it is necessary to limit public participation to those who are adversely affected by the order or the proceeding. Such a limitation could necessitate substantial or protracted consideration of whether a person submitting written comments on a proposed enforcement action was adversely affected. This would be inefficient and contrary to the intent of providing for an expeditious, informal resolution of the enforcement action unless such a procedure is inadequate for determination of the issues. Informal enforcement procedures that would foster expeditious resolutions are desirable, wherever sufficient, because a certification process which also affords opportunities for public participation will be occurring on an annual basis.

If the Commission determines that more extensive adjudicatory procedures are necessary in a particular case, it may order use of further procedures, such as those in 10 CFR part 2, subpart G or subpart L. In these cases, intervention would depend on the showing of how a petitioner's interest is affected in accordance with the adopted procedures.

However, the general procedural description of post-issuance enforcement action in the proposed rule does not foreclose the Commission's ability to limit the scope of a proceeding or define the issues for determination in any enforcement action. For clarity, § 76.70 has been revised to specify the procedures that would be followed in an enforcement action in more detail.

First, the final rule makes explicit that the Commission may institute a proceeding to modify, suspend, or revoke a certificate or approved compliance plan, or to take other action as appropriate by service of an order on the Corporation that specifies: The proposed action; the alleged violations, or potentially hazardous conditions, or other facts deemed to be sufficient ground for the proposed action; a reasonable period for submission of a written response to the order and for submission of written views by interested persons within a reasonable period after publication of the order in the **Federal Register**; issues for resolution if the proposed action is contested; and the effective date of the order. If the order is made immediately effective pending further order, the order must include a statement of reasons for making the proposed action immediately effective.

Second, the final rule clarifies, inter alia, that the Corporation may promptly request that the Commission set aside the effectiveness of an immediately effective order, provided that the request specifically states the reason why the order is not based on adequate evidence and is accompanied by affidavits or evidence upon which the Corporation relies. The NRC shall respond within 5 days of the receipt of the motion.

These details of the procedural process are similar to those which apply to issuance of orders to licensees under 10 CFR part 2, subpart B. However, they preserve the provision for informal procedures for resolution of the action in the absence of a determination that more extensive procedures are appropriate.

In addition, the final rule adopts a suggestion from DOE that information submitted under this section by the Corporation be signed under oath or affirmation.

Section 76.72 Miscellaneous procedural matters. This section addresses procedures for filing petitions, ruling on matters of procedure, and communication between Commission and NRC staff. Additional guidance regarding the filing and service of petitions for review of the NMSS Director's decision and responses to these petitions may be included in the Director's decision or by order of the Commission.

Except for proceedings under 10 CFR part 2, subpart G, for imposition of a civil penalty resulting from violations of section 206 of the Energy Reorganization Act of 1974, the Commission is not imposing restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of this regulatory process. The NRC staff would not participate in a review of the Director's decision as a party but would serve as an advisor to the Commission. Congress has not required formal adjudication. The Commission believes that informal processing without such formal restrictions on communication is best suited for resolution of annual applications for a certificate.

Section 76.74 Computation of extension of time. This section has been added to the final rule to specify the duration of designated time periods and confirm the Commission's ability to extend or shorten time periods for action for good cause and specifies that additional time would be granted in the event that a required date falls on a Saturday, Sunday or legal holiday.

C. Technical Safety Requirements

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

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

The Corporation requested a change in format regarding contents of applications for the purpose of increased clarity regarding the precise scope of the initial application and of renewal applications. Included in the proposed restructuring was revision of proposed § 76.35 pertaining to contents of application so as to limit its scope to the contents of the initial application. The Corporation also recommended the addition of a new § 76.36 that would present the precise content of the annual resubmittal.

The NRC agrees that the revised format will add clarity to the prescribed content of the initial and renewal applications. As a result of the restructuring, the final rule makes § 76.35 applicable to initial applications and adds a new § 76.36 applicable to annual renewal.

The Corporation also recommended an application procedure which would generally follow the guidance of NRC Regulatory Guide 3.52. These proposed changes were based on an application which would contain a "Part I" comprised of binding certificate "conditions" and a "Part II" containing a nonbinding safety demonstration. This restructuring was not adopted. This decision is based on a recent review of the Commission's current licensing and oversight programs for fuel cycle plants[1] that indicates the "Part I/II" approach will probably be changed and that safety analysis reports will be required. The Corporation, in its comments, identified the "Part II" safety demonstration to be functionally equivalent to the safety analysis report. While this is generally true, with respect to technical content, the NRC believes that safety analysis reports are preferable because they provide more rigorous, binding documentation of the basis for safe operation of a plant. Changes to the safety analysis report would be permitted only in accordance with § 76.68.

In publishing the draft 10 CFR part 76, the Commission specifically requested comments on the appropriateness of requiring the Corporation to provide financial assurance for the costs associated with decontamination and decommissioning of the gaseous diffusion plants. Comments were received favoring both retention and deletion of a financial assurance requirement. The Corporation commented that DOE was responsible for decontamination and decommissioning of the gaseous diffusion plants under the AEA and that the financial assurance requirements should not apply to the Corporation. DOE, on the other hand, noted that it is only responsible for decontamination and decommissioning of pre-existing conditions under the AEA and that the Corporation will remain responsible for other costs associated with decontamination and decommissioning, including the costs associated with disposal of wastes generated during Corporation operation of the GDPs.

The NRC has determined that the Corporation does have some limited financial responsibility for decontamination and decommissioning activities. The Corporation has

[1] Proposed Method for Regulating Major Materials Licensees, NUREG–1324.

acknowledged in its comments that, under its lease with DOE, there is at least one area where it remains responsible for the costs of decommissioning. Specifically, the Corporation has acknowledged that it is responsible for any increased costs for DOE decontamination and decommissioning of the facilities that arise from removal by the Corporation of capital improvements the Corporation makes at the facilities. In addition, the terms of the DOE/Corporation lease provide that the Corporation is to remain financially responsible, even after return of the GDPs to DOE, for the ultimate treatment and disposal of wastes generated by the Corporation. Nevertheless, the NRC has determined that the language in the draft 10 CFR part 76 requiring financial assurance from the Corporation was written to apply to a broader scope of decontamination and decommissioning activities than are the Corporation's responsibility. Accordingly, the final rule has been revised to require that the Corporation provide financial assurance for only those aspects of the decontamination and decommissioning costs which are their responsibility.

Two commenters asked that the Corporation be required to demonstrate compliance with the applicable provisions of 10 CFR Part 61 which deal with waste classification and waste disposal because these requirements are essential for the proper handling and disposal of all wastes at the GDPs. Waste classification is covered under 10 CFR part 20, subpart K; therefore, an additional reference to 10 CFR part 61 is not needed.

One commenter suggested that a specific license be required if the Corporation proposes to treat radioactive waste at one plant that was received from the other plant and that the Corporation be required to obtain approvals for the treatment from the Central Midwest Interstate Low-Level Radioactive Waste Commission. Plans for treatment of any radioactive waste stream by the Corporation are a required part of the initial application for certification under proposed § 76.35(k). The certification process, therefore, will include consideration of the waste stream issue. Under Section 1701 (c)(3) of the AEA, the certification process is in lieu of any other requirement for a license for the gaseous diffusion plants leased by the Corporation from the DOE. Accordingly, no NRC issued specific license addressing the radioactive waste streams at the DOE gaseous diffusion plants being leased to the Corporation is required.

DOE suggested that the rule specifically prohibit the Corporation from transporting special nuclear material of moderate strategic significance (Category II material) or formula quantities of special nuclear material (Category I material). These activities are not contemplated, and this prohibition has been included in the rule.

One commenter suggested that the rule include the requirement for semiannual reporting of effluents as contained in the Corporation proposal. Although semiannual reporting is a requirement in 10 CFR part 70, this recommendation was not adopted. Semiannual reporting is intended for licensees who hold multi-year licenses. The Corporation will be required to report its annual effluent with the certification application every year. This is adequate for assessment purposes. There appears to be no additional benefit in receiving the information on a semiannual basis.

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

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

The Corporation must provide a level of protection against accidents during plant operations sufficient to provide adequate protection of the public health and safety. In assessing the level of protection provided by the Corporation, the NRC will consider both the total radiation dose to the whole body and the intake of soluble uranium for an individual at the site boundary.

Several comments were received concerning the level of protection against accidents during plant operations sufficient to provide adequate protection of public health and safety. The Commission specifically requested comments on the use of safety objectives, including suggested limiting values with supporting rationale, and whether or not they should be included as part of the rule. The Environmental Protection Agency stated that the EPA Protective Guides (1–5 rem) should be used rather than the criteria discussed in the proposed rule and that the values should be specified in the regulation. Several other commenters agreed with this approach. Another commenter stated that the final standards for accident dose assessment should be applied equally to all enrichment facilities. The Corporation objected to the use of any limits in the rule or its accompanying statements to determine the adequacy of accident analysis results and indicated that it is well beyond current regulatory practice. DOE suggested addressing chemically toxic material as well.

The Commission has decided not to include numerical accident limits in the final rule. The NRC believes that to include a specific numerical limit in the regulation could be unduly restrictive, considering that the plants have already been designed and sited and the uncertainty of health effects for uranium intakes. The NRC staff contracted with Pacific Northwest Laboratory [2] to review the available literature on uranium toxicity and the results of this review suggested that the best estimate of a toxicity threshold would be an intake of 30 milligrams of uranium. In assessing the adequacy of protection of the public health and safety from potential accidents, the NRC will consider whether the potential consequences of a reasonable spectrum of postulated accident scenarios exceed .25 Sv (25 rems), or uranium intakes of 30 milligrams, taking into account the uncertainties associated with modeling and estimating such consequences.

In considering intakes of soluble uranium, the Commission recognizes that the chemical toxicity of uranium could be the limiting factor in the accident analysis under this section. The Commission's intended use of chemical toxicity considerations in part 76 is consistent with its practice elsewhere (e.g., 10 CFR 20.1201(e)), and prevents any potential regulatory gap in public protection against toxic effects of soluble uranium.

The EPA guidelines of 1–5 rem for offsite protection action recommendations are appropriate for emergency planning purposes but are not appropriate for accident analysis.

The final rule requires that a safety analysis of the site activities be performed to evaluate the potential for releases of radiological material from the existing plants. The analysis should

[2] Fisher, D. R. et al., "Uranium Hexafluoride Public Risk," PNL–10065, August 1994.

evaluate releases from a reasonable spectrum of postulated accident scenarios which may occur in the gaseous diffusion plants, taking into account the existing systems in operation, including procedures, that are intended to mitigate the consequence of any release. These potential releases, together with operational practices and site characteristics, including meteorology, are to be used to evaluate the potential onsite and offsite radiological consequences. Technical safety requirements will be established to ensure that releases are unlikely and, in any case, if releases occur they will be within an acceptable range.

One commenter stated that the NRC would have no mechanism for enforcement of numerical limits if they are not included in the standards. The certificate issued by the NRC will include limiting conditions for operation that will be enforceable.

LES commented that specific natural phenomena and specific accident dose limits should be applied equally to all enrichment facilities. The apparent reference for this suggestion was the current NRC review of their license application for a new uranium enrichment facility. Another commenter expressed concern that the Paducah plant resides in a geological rift zone. The NRC will not include specific reference design assessment values for the existing Corporation facilities, since these facilities are already sited, but will evaluate consequences of potential accidents resulting from natural phenomena during review of the Corporation's safety analysis.

A comment was also received concerning the discussion in the statement of considerations on the development of guidance on an integrated safety analysis (ISA) and applicability to the GDPs. The final rule does not include requirements for an ISA because its incorporation into the regulatory process is still under NRC staff review.

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

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

The Corporation requested that the use of the term "technical safety requirements" (TSRs) be changed to "operational safety requirements" (OSRs) as the GDPs have historically operated under OSRs which are similar to TSRs. The Corporation also suggested a change from "Safety Analysis Report" (SAR) to "Safety Demonstration" (SD) as being "functionally equivalent." The Commission prefers the term "technical safety requirements" because the requirements may cover subjects broader than operations, and because existing Corporation operational requirements include matters beyond NRC jurisdiction. Similarly, the term "safety analysis report" is preferred because it is a more generally accepted term. Therefore, no change was made to the rule.

The Corporation also recommended deletion of the list of the 14 safety topics that are to be addressed as being more appropriate for identifying accidents for analysis. DOE referenced the list of safety topics as those which must be addressed under assessment of accidents. The list of topics to be addressed in the technical safety requirements is included to ensure that operations are controlled within certain safe parameters under normal, off-normal, and accident conditions. Therefore, the list has been retained, but the rule has been revised to clarify that the Corporation must describe the procedures and/or equipment that reflect consideration of each of the listed safety topics.

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

A Corporation comment agreed with use of ASME NQA-1 as a basis for a quality assurance program (§ 76.93), but expressed concern that implementation problems could result if NQA-1 is applied in a manner similar to reactors. The Corporation suggested that the rule should allow use of equivalent alternatives to NQA-1. If found adequate under review, the NRC could approve use of an equivalent alternative to NQA-1, and the final rule has been revised accordingly.

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

The Corporation strongly recommended that the performance-based training concept be deleted from the proposed rule and instead require the Corporation to "establish, implement and maintain a training program to assure that personnel are adequately trained to perform their nuclear-safety related functions." They indicated that development of performance-based training would go well beyond both the existing requirements of 10 CFR part 70 and current practices at the GDPs. They further commented that it would subject the Corporation 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. The Corporation believes the proposed section will require the GDPs "to adopt the full performance-based training concept embodied in part 50" which uses the Institute of Nuclear Power Operations (INPO) training methodologies for commercial power reactor licensees. The Corporation estimates it will cost about $8 million to fully develop and implement a training program for selected tasks affecting nuclear safety or radiological controls.

The Commission believes that the performance-based training requirement should be retained. The Corporation's main concern is that it might be expected to establish training programs of similar complexity to those of power reactors, which is not the case. The final rule allows flexibility, and the Commission believes that the existing training program inherited by the Corporation can be adapted to comply with the rule at reasonable cost.

The Commission must be assured that adequate training is provided and that those persons performing operations that could have an effect on health and safety have mastery of their operating tasks. Therefore, the final rule was not changed. The Commission believes that a training program that includes the concepts of performance-based training provides that assurance. The Commission also notes that a requirement for performance-based training has been established for nuclear power reactors and has been determined to be cost-effective for such facilities. The Commission does not see any reason to conclude that this will not also be the case for the enrichment plants.

D. Incorporation of Existing Regulations

Portions of existing Commission regulations are applicable to certification of the Corporation's operation of the gaseous diffusion plants and cross referenced (§ 76.60).

Requirements for notices, instructions, and reports to workers are contained in 10 CFR part 19, "Notices, Instructions, and Reports To Workers: Inspection and Investigations." Part 19 specifies the requirements for notices, instructions, and reports by the Corporation to individuals participating in gaseous diffusion activities. It also sets forth the rights and responsibilities of the Commission and individuals during interviews on any matter within the Commission's jurisdiction.

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

A comment was received indicating that the health of the public is being placed at risk presently and this policy would continue under the proposed NRC rules. The NRC standards require that the Corporation must meet part 20 requirements for protection of workers and the public against radiation. This includes specific effluent limits that the Corporation must meet. The Commission believes that the current requirements of part 20 provide for adequate safety for workers and the public from radiation effects.

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

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

Requirements for packaging and transportation are contained in 10 CFR part 71, "Packaging and Transportation of Radioactive Material." Part 71 establishes requirements and procedures for packaging, preparation for shipment, and transportation of radioactive material.

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

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

(1) Formula quantities of strategic special nuclear material (also referred to by the shorter phrase "Category I material");

(2) Special nuclear material of moderate strategic significance (Category II), and

(3) Special nuclear material of low strategic significance (Category III).

The gaseous diffusion plants are to produce only Category III material, and only the safeguards for that grade of material need apply to production activities. Nonetheless, the Commission recognizes that the Corporation may need to or may opt to engage in nonproduction activities that involve the other categories of material. In the past, the Portsmouth plant has produced high enriched uranium hexafluoride (UF_6). As a result of this past production, there may be portions of the plant under lease by the Corporation or to which it will have access that will continue to have high enriched UF_6 fixed to interior surfaces of process equipment. Additionally, some areas, such as the analytical laboratory, may continue to have a high enriched inventory. The Corporation may elect to engage in nonproduction business activities that involve high enriched UF_6. To be responsive to the full range of possible Corporation activities, safeguards regulations for all three categories of material are listed in subpart E and are to be applied in accordance with the categories of material the Corporation actually uses, possesses, or has access to.

One commenter noted that the referenced requirement of § 70.51(d) is not consistent with § 74.33(c)(4)(i) [12 months verses 370 days] in specifying the static inventory frequency for material control and accounting for uranium. The NRC agrees with this comment and has revised § 76.117(a) to specify 370 days as the static inventory frequency for the GDPs. The 370-day period contained in § 74.33(c)(4)(i) and revised § 76.117(a) provides a full year with an additional margin of a few days to provide flexibility.

Other comments focus on §§ 74.15(b)(2), 74.33(c)(2), 74.33(c)(4)(i) and 74.33(c)(6), which are among the various material control and accounting requirements referenced in § 76.117. The comments request relief from various aspects of these requirements and provide rationale in support of the request. The requirements of § 74.15 and § 74.33 are performance requirements that must be implemented on a site-specific basis for the fundamental nuclear material control plans for each site that the Corporation must submit for NRC approval. The nuclear material control plans must describe how each requirement will be carried out at each of the two sites. After approval, the plan will become the principal document that governs material control and accounting at the site. Because the requirements are performance requirements rather than prescriptive requirements, wide latitude exists for achieving appropriate performance for the overall material control and accounting program. Accordingly, no change to the proposed regulation was made in response to these specific comments.

The requirement the Corporation believes has the greatest potential cost impact is § 74.33(c)(4)(i), which requires enrichment facilities to conduct periodic inventories of in-process enriched uranium for safeguards accountability purposes. This inventory consists of a large quantity of material in gaseous form and a relatively small quantity of solids. The Corporation requested that the rule require measurement of material in the gas phase only. The Corporation believes that, due to the size of the facilities, the relatively small quantity of solids, and the limitations of instruments in distinguishing between the solids and the gaseous material, extensive direct measurement of the solids is not practical and the cost would, in any case, be prohibitive. The Commission believes that a broad exemption from measurement of the solids would undermine the well-established domestic and international safeguards principle requiring strict accountability of special nuclear material. The Commission further believes that the rule can be met by methods other than extensive direct measurements, for example, appropriate sampling and use of previous measurements, at reasonable cost and, therefore the rule has not been changed.

In the course of reviewing the comments, it was found that § 70.22(h), which contains requirements for physical security plans for Category I material, had not been incorporated by reference in § 76.113 as was intended. That reference has now been incorporated. The change is for completeness and will affect the Corporation only in the unlikely event that it elects to operate a Category I plant. Additionally, it was found that § 73.70 had been unintentionally incorporated by reference into § 76.117. The reference is not relevant to § 76.117 and has been deleted.

NRC does not intend to incorporate any additional requirements for personnel security screening for access to or control over special nuclear material as contained in 10 CFR part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material," if the Corporation elects to engage in activities which involve strategic special nuclear material. The requirements for this separate access program are met by the DOE access authorization program for the GDPs.

A comment was received indicating that no unrecovered costs should be incurred by the NRC in conjunction with certification, and a fee schedule should be included in the rule. All NRC costs associated with GDP certification are recovered from the Corporation and need not be covered in this rule. Fees are covered in 10 CFR parts 170 and 171.

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

In addition, the Corporation commented that the proposed modification to § 95.5 should be deleted because it incorrectly attempts to incorporate the Corporation, which is not a licensee, under the definition of a "licensee." This suggested revision was adopted as "corporation," is covered in § 76.60 and is under the definition of "person" listed in 10 CFR 95.5.

The Corporation requested that § 76.119 be modified to require examination of 25 percent of the security containers daily on a rotational basis if the containers are in a controlled access area. The Corporation also recommended that § 76.119 be modified to specifically state that 10 CFR 95.37(g), 95.41, 95.43, and parts of § 95.47 do not apply to the Corporation and to clarify that document control practices implemented under DOE security oversight may continue. DOE commented that the rule should include an exception that the Corporation be permitted to continue using the applicable DOE procedures and practices when a conflict occurs between NRC requirements and the DOE documents. The Commission does not accept this recommendation, because the regulations for protection of classified matter should be consistent for all regulated organizations. The provisions of 10 CFR part 95, coupled with an approved security plan for the protection of classified matter, will contain all of the applicable requirements for security facility approval and for the safeguarding of classified matter at the gaseous diffusion plants. The Commission does not anticipate any significant conflicts with the previous DOE procedures. However, any conflicts that may be identified will be resolved on a case-by-case basis.

Security Facility Approval and Safeguarding of National Security Information and Restricted Data; Minor Conforming Changes

Minor editorial changes are also being made to certain sections of 10 CFR part 95 to clarify that there are unique aspects of uranium enrichment facilities and operations which handle, store, process, transport, transmit, and destroy classified matter. Specific changes include replacing the use of the term "documents" with "matter" in order to include the classified equipment and hardware associated with uranium enrichment plants; more precisely defining "NRC access authorizations" because the Corporation will not be subject to 10 CFR part 25; and modifying § 95.36 to include participants in other international agreements.

Section 95.37(a) is also being revised to replace the reference to classification guidance previously included as Appendix A to part 95. This guidance is available separately in a more usable form such as NUREG/BR-0069, Revision 2, "NRC Classification Guide for National Security Information Concerning Nuclear Material And Facilities." NUREG/BR-0069, which is publicly available, can readily be updated to promptly reflect Executive Orders that require modifications to the guidance associated with classification issues. Currently, each NRC licensee has committed in its approved security plans to using NUREG/BR 0069 instead of relying on 10 CFR part 95, appendix A. Similarly, the GDPs will be expected to reference more up-to-date classification guidance such as NUREG/BR-0069 in complying with 10 CFR part 95. Because NUREG/BR-0069 is a more appropriate reference than 10 CFR part 95, appendix A, this appendix is being deleted and appropriate changes to § 95.37(a) are being made to reflect the actual use of alternative NRC classification guidance documents.

Finding of No Significant Environmental Impact: Availability; Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The two plants to be regulated by this rule have already been subject to evaluation in accordance with NEPA. The Department of Energy has prepared an environmental impact statement for the gaseous diffusion plant in Piketon, Ohio,[3] and an environmental assessment for the plant in Paducah, Kentucky.[4] The NRC has reviewed those documents, as well as environmental reports prepared by DOE for both facilities in 1992 and environmental audits prepared by DOE prior to turning operation of the Facilities over to the Corporation in 1993. The NRC also conducted extensive site visits. No significant differences in operations, previously evaluated by DOE, were identified that would result in current operations having significantly different environmental effects than those already evaluated in DOE's environmental reviews. The Commission's certification requirements are intended to be at least as stringent as the existing requirements applicable to the two plants which are currently operating and have been operating for nearly 40 years. The promulgation of a rule governing these plants, and their subsequent regulation by the NRC, will not result in any environmental impacts beyond those previously considered by DOE in its environmental reviews and which currently exist or would be expected to continue absent NRC regulatory oversight. The NRC environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Similarly, subsequent certificates of compliance including amendments, modifications, and renewals issued pursuant to this part will consist of findings of compliance with 10 CFR part 76. Therefore, these actions will not result in any significant new environmental impacts. The regulations require that the Corporation submit information for use by NRC in preparing an environmental assessment for certification applications addressing areas where the facilities are not in compliance with the requirements of part 76. Part 51 of Title 10 of the Code of Federal Regulations is being amended to include a categorical exclusion for such certification actions pursuant to part 76.

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

[3] Final Environmental Impact Statement, Portsmouth Gaseous Diffusion Plant Site, May 1977, ERDA–1555; Final Environmental Statement, Portsmouth Gaseous Diffusion Plant Expansion, September 1977, ERDA–1549.

[4] Final Environmental Impact Assessment Of The Paducah Gaseous Diffusion Plant Site, August 1982, DOE/EA–0155.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule of limited applicability apply only to a wholly-owned instrumentality of the United States and affect fewer than 10 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.).

Regulatory Analysis

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

Regulatory Flexibility Certification

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

Backfit Analysis

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

List of Subjects

10 CFR Part 19

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

10 CFR Part 20

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

10 CFR Part 21

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

10 CFR Part 26

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

10 CFR Part 51

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

10 CFR Part 70

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

10 CFR Part 71

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

10 CFR Part 73

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

10 CFR Part 74

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

10 CFR Part 76

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

10 CFR Part 95

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); 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 36, 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), 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:

§ 20.1002 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 36, 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, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); 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, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (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).

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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); 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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

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, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); 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

Subpart D—Safety

Subpart E—Safeguards and Security

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, 106 Stat. 2932, 2951, 2952, 2953 (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. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

Subpart A—General Provisions

§ 76.1 Purpose.

(a) This part establishes requirements that will govern the operation of those portions of the Portsmouth and Paducah Gaseous Diffusion Plants located in Piketon, Ohio, and Paducah, Kentucky, respectively, that are leased by the United States Enrichment Corporation. 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 (68 Stat. 919); Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242); and Titles IX and XI of the Energy Policy Act of 1992 (106 Stat. 2923, 2951).

§ 76.2 Scope.

The regulations in this part apply only to those portions of the Portsmouth and Paducah Gaseous Diffusion Plants leased by the Corporation, per the Lease Agreement between the Department of Energy and the United States Enrichment Corporation. This part also gives notice to all persons who knowingly provide to the Corporation or any contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to the activities subject to this part that they may be individually subject to NRC enforcement action for violation of § 76.10.

§ 76.4 Definitions.

As used in this part:

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

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

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

Non-Agreement State means any other State.

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 revealing 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 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 pursuant to a plan for the privatization of USEC that is approved by the President in accordance with Sections 1501 and 1502 of the Atomic Energy Act of 1954, as amended.

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.

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 weighting factors applicable to each of the body organs or tissues that are irradiated, as defined in 10 CFR Part 20 (§§ 20.1001 through 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).

Lease Agreement means the agreement entered into as of July 1, 1993, and any subsequent revisions between the United States Department of Energy and the United States Enrichment Corporation.

Limiting conditions for operation means the lowest functional capability or performance levels of structures, systems, components, and their support systems required for normal 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.

Radioactive material means source material, special nuclear material, or byproduct material, possessed, used, transferred, or disposed of under part 76.

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.

Unclassified Controlled Nuclear Information is information whose unauthorized dissemination is prohibited under Section 148 of the Atomic Energy Act.

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

Unreviewed safety question means a change which involves any of the following:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or

(3) The margin of safety as defined in the basis for any technical safety requirement is reduced.

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 applicable Resident Inspector. Communications and reports may be delivered in person at the Commission's offices at 11555 Rockville Pike, Rockville, Maryland, or at the NRC Public Document Room 2120 L Street, NW. (Lower Level), 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, a contractor, or a 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; and

(v) Assisting or participating in, or attempting to assist or participate in, the protected 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 the date of Director's decision on the initial certificate of compliance and/or 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) Paragraph (b) of this section does 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; except, that the Corporation is not subject to the authority of Section 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.

(a) After the Commission completes the initial certification process, the Corporation or its contractors may not operate the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky, unless an appropriate certificate of compliance, and/or an approved compliance plan is in effect 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 Piketon, Ohio, and Paducah, Kentucky.

(b) For the purposes of §§ 30.41, 40.41, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

§ 76.23 Specific exemptions.

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

Subpart B—Application

§ 76.31 Annual application requirement.

The Corporation shall file an initial certificate application in 1995 [1], and thereafter, the Corporation shall apply to the Commission each year on or before April 15, for a certificate of compliance in accordance with § 76.36.

§ 76.33 Application procedures.

(a) *Filing requirements.* (1) An application for an initial certificate of compliance must 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 appropriate resident inspector, in accordance with § 76.5 of this part.

(2) The application must include the full name, address, age (if an individual), and citizenship of the applicant. If the applicant is a corporation or other entity, it shall indicate the State where it was incorporated or organized, the location of the principal office, the names, addresses, and citizenship of its principal office, the names, addresses, and citizenship of its principal officers, and shall include information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government.

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

(d) *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.

(e) *Withholdable information.* An initial application which contains Restricted Data, National Security Information, Safeguards Information, Unclassified Controlled Nuclear 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.

[1] The initial filing for a certificate of compliance must be tendered no later than 6 months after the effective date of this rule or by April 15, 1995, whichever is later.

§ 76.35 Contents of initial application.

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

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

(1) The activities and locations 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) An assessment of accidents based on the requirements of § 76.85;

(5) A training program that meets the requirements of § 76.95;

(6) 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.);

(7) 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

(8) A description of the plant site, and a description of the principal structures, systems, and components of the plant.

(b) A plan prepared and approved by DOE for achieving compliance with respect to any areas of noncompliance with the NRC's regulations that are identified by the Corporation as of the date of the application that includes:

(1) A description of the areas of noncompliance;

(2) A plan of actions and schedules for achieving compliance; and

(3) A justification for continued operation with adequate safety and safeguards.

(c) Any relevant information concerning deviations from the published Environmental Impact Statement, Environmental Assessments, or environmental permits under which the plants currently operate from which the Commission can prepare an environmental assessment related to the compliance plan.

(d) A quality assurance program that meets the requirements of § 76.93.

(e) Technical safety requirements in accordance with § 76.87. A summary statement of the bases or reasons for the requirements, other than those covering administrative controls, must also be included in the application, but will not be considered part of the technical safety requirements.

(f) An emergency plan that meets the requirements of § 76.91.

(g) A compliance status report that 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.

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

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

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

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

(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 offsite.

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

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

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

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

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

(k) A plan describing the facility's proposed security procedures and controls as set forth in § 95.15(b) of this chapter for protection of classified matter.

(l) 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 of this chapter.

(m) A description of the program, as appropriate, for processing, management, and disposal of mixed and radioactive wastes and depleted uranium generated by operations. This description must be limited to processing, management, and disposal activities conducted during operation of the facilities while under lease to the Corporation. The application must also include a description of the waste streams generated by enrichment operations, annual volumes of depleted uranium and waste expected, identification of radioisotopes contained in the waste, physical and chemical forms of the depleted uranium and waste, plans for managing the depleted uranium and waste, and plans for ultimate disposition of the waste and depleted uranium before turnover of the facilities to the Department of Energy under the terms of the lease agreement between the United States Enrichment Corporation and the Department.

(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 annual application for certification.

§ 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.

(b) Information contained in previous applications, statements, or reports filed with the Commission may be referenced as part of the application, provided that the reference is clear and specific.

(c) An application for renewal is subject to the requirements in § 76.33 and must contain the following information:

(1) The information specified in § 76.35; or,

(2) A statement by the Corporation that the NRC may rely upon the information provided in the previous application(s) upon which the existing certificate is based, except for:

(i) Any proposed changes in the existing certificate of compliance conditions or technical safety requirements;

(ii) Any proposed changes to the documents submitted with the previous application in accordance with § 76.35;

(iii) Any changes which the Corporation has made without prior NRC approval pursuant to § 76.68; and,

(iv) Any changes to certificate conditions or technical safety requirements for which the Corporation has sought and received Commission approval pursuant to § 76.45.

(d) The changes which are submitted as part of an application for renewal in accordance with paragraph (c)(2) of this section, must be in the form of specific changes to the documentation specified in § 76.35. The changes must be marked and dated for easy identification.

§ 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, Unclassified Controlled Nuclear Information, 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, Unclassified Controlled Nuclear 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.

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

(b) *Director's decision.* 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.

(c) *Oath or affirmation.* An application for an amendment of the certificate of compliance must be executed in a signed original by the Corporation under oath or affirmation.

Subpart C—Certification

§ 76.51 Conditions of certification.

The Corporation shall comply with the certificate of compliance, any approved compliance plan, and the requirements set forth and referenced in this part, except as may be modified by the certificate or approved compliance plan.

§ 76.53 Consultation with Environmental Protection Agency.

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

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient annual application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the 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.

§ 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 comply with the provisions of this part.

(c) The Corporation shall comply with the applicable provisions of 10 CFR part 19, "Notices, Instructions and Reports To Workers: Inspection and Investigations," with the following modifications:

(1) Civil penalties may not be imposed on the Corporation pursuant to § 19.30 of this chapter except for violations of Section 206 of the Energy Reorganization Act.

(2) The Corporation shall post NRC Form 3 not later than the date of Director's decision on the initial certificate of compliance and/or an initial plan for achieving compliance, during the term of the certificate, and for 30 days following certificate termination.

(d) The Corporation shall comply with the applicable provisions of 10 CFR part 20, "Standards For Protection Against Radiation," with the following modifications:

(1) Civil penalties may not be imposed on the Corporation pursuant to § 20.2401 of this chapter except for violations of section 206 of the Energy Reorganization Act.

(2) The Corporation shall comply with the requirements in this part not later than the date of the Director's decision on the initial certificate of compliance and/or as specified in an approved plan for achieving compliance.

(e) The Corporation shall comply with the applicable provisions of 10 CFR part 21, "Reporting of Defects and Noncompliance," with the following modifications:

(1) The Corporation shall comply with the requirements in §§ 21.6 and 21.21 not later than the date of the Director's

decision on the initial certificate of compliance and/or an initial plan for achieving compliance.

(2) Under § 21.31, procurement documents issued by the Corporation after it submits the initial application for a certificate of compliance must specify that the provisions of 10 CFR part 21 apply.

(f) The Corporation shall 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 comply with the applicable provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material."

(h) The Corporation shall 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," as specified in subpart E to this part 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.

§ 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, if any, of noncompliance. The Director may impose any appropriate terms and conditions.

(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 comments in response to the **Federal Register** Notice on the application or compliance plan under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the **Federal Register** notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt, by order, further procedures that, 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 and the Department in writing of any areas of noncompliance with the Commission's regulations and offer the Department or the Corporation an opportunity to submit a proposed compliance plan prepared by the Department regarding the identified areas of noncompliance. The Director shall take this action even if the Department or 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 comments in response to the **Federal Register** notice on the application or compliance plan under § 76.37 or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not to exceed 30 pages, requesting review of the Director's decision. This petition must be filed with the Commission not later than 15 days after publication of the **Federal Register** notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the **Federal Register** notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

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

§ 76.65 Inalienability of certificates.

The certificate granted under the regulations in this part may 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, after securing full information, finds that the transfer is in accordance with the provisions of the Act, and consents 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 gaseous diffusion plants and other activities authorized under the certificate.

(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 gaseous diffusion plants.

§ 76.68 Plant changes.

(a) The Corporation may make changes to the plant or to the plant's operations as described in the safety analysis report without prior Commission approval provided all the provisions of this section are met:

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

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

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

(4) The changes may not involve a change in any condition to the certificate of compliance.

(5) The changes may not involve a change to any condition to the approved compliance plan.

(6) The changes may 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. 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 annually as specified in § 76.36 of this part or at a shorter interval as may be specified in the certificate.

(c) The Corporation shall maintain records of changes in the plant and of changes in the programs, plans, policies, procedures and operations described in the approved application, and copies of the safety analyses on which the changes were based. The records of plant changes must be retained until the end of the duration of the lease. The records of changes in programs, plans, policies, procedures, and operations and copies of the safety analysis on which the changes were based must be retained for a period of 2 years.

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

§ 76.70 Post issuance.

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

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

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

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

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

(c) Procedures governing amendment, revocation, suspension, or imposing requirements by order.

(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 therefore, 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) The Commission may institute a proceeding to modify, suspend, or revoke a certificate or take such other action as may be proper by serving on the Corporation or other person subject to the jurisdiction of the Commission an order that will:

(i) Allege the violations with which the Corporation or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(ii) Provide that the Corporation or other person who is charged must, and other interested persons may, submit a written response to the order within a reasonable period after publication of the order as may be specified in the order;

(iii) Specify the issues for resolution should the order be contested;

(iv) State the effective date of the order; if the Commission finds the public health, common defense and security, or safety, so require or that the violation or conduct causing the violation is willful, the order may provide that the proposed action be immediately effective pending further order and include a statement of reasons for making the proposed action immediately effective;

(v) Provide that the Commission may make a final decision after consideration of the written submissions or may in its discretion adopt by order, upon the Commission's own initiative or at the request of the Corporation or an interested person, further procedures for a hearing of the issues before making a final enforcement decision. These procedures may include requirements for further participation in the proceeding, such as the requirements for intervention under part 2, subparts G or L of this chapter. Submission of written comments by interested persons do not constitute entitlement to further participation in the proceeding. Further procedures will not normally be provided for at the request of an interested person unless the person is adversely affected by the order.

(3) The Corporation or other person to whom the Commission has issued an immediately effective order may, in addition to submitting a written response, move the Commission to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on. The NRC staff shall respond within 5 days of the receipt of the motion.

(d) Notice of violation. (1) In response to an alleged violation of any provision of the Act or NRC regulations or the conditions of a certificate, compliance plan, or an order issued by the Commission, the Commission may serve on the Corporation or other person subject to the jurisdiction of the Commission a written notice of violation. A separate notice may be omitted if an order or demand for information pursuant to this section is issued that otherwise identifies the apparent violation. The notice of violation will concisely state the alleged violation and will require the Corporation or other person subject to it, within twenty (20) days of the date of the notice or other specified time, to submit a written explanation or statement in reply including:

(i) Corrective steps which have been taken by the Corporation or other person and the results achieved;

(ii) Corrective steps which will be taken; and

(iii) The date when full compliance will be achieved.

(2) The notice may require the Corporation or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Commission may issue an order or a demand for information as to why the certificate should not be modified, suspended, or revoked or why such other action as may be proper should not be taken.

(e) 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, signed under oath or affirmation, 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 are 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 these petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission has 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 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, and in 10 CFR part 2, subpart G, will 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 apply to a request by any person to institute a proceeding pursuant to § 76.70 to amend, revoke, or suspend a certificate of compliance or approved compliance plan, or for such other action as may be proper.

§ 76.74 Computation and extension of time.

(a) In computing any period of time, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday.

(b) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission.

§ 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 NRC staff position.

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

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

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

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

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

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

(5) The Commission shall always require the backfitting of a plant if it determines that the 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 must include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediate 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; and

(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 or her designee.

Subpart D—Safety

§ 76.81 Authorized use of radioactive material.

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

§ 76.83 Transfer of radioactive material.

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

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

(1) From one component of the Corporation to another;

(2) To the Department;

(3) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission under Section 274 of the Act, if the quantity transferred is not sufficient to form a critical mass;

(4) To any person exempt from the licensing requirements of the Act and requirements in this part, to the extent permitted under the 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 the radioactive material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;

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

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

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

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

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

(2) The Corporation 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 an analysis of potential accidents and consequences to establish the basis for limiting conditions for operation of the plant with respect to the potential for releases of radioactive material. Special attention must be directed to assurance that plant operation will be conducted in a manner to prevent or to mitigate the 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 contempleted. The assessment must be performed using an expected release rate resulting from anticipated operational occurrences and accidents with existing systems and procedures intended to mitigate the release consequences, along with site characteristics, including meteorology, to evaluate the offsite radiological consequences.

§ 76.87 Technical safety requirements.

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

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

(c) Appropriate references to established procedures and/or equipment to address each of the following safety topics must be included in technical safety requirements:

(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 must include items in the following categories:

(1) Safety limits.

(i) If any safety limit is exceeded, corrective action must be taken as stated in the response procedures associated with the technical safety requirements or the affected part of the process must be shut down unless this action would increase the risk to the health and safety of the public or plant personnel.

(ii) If any safety limit is exceeded, the Corporation shall notify the Commission if required by § 76.120, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence.

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

(2) Limiting control settings.

(i) Where a limiting control setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that protective action, either automatic or manual, will correct the abnormal situation before a safety limit is exceeded. If, during operation, the automatic alarm or protective devices do not function as required, appropriate action must be taken to maintain the variables within the limiting control-setting values and to repair promptly the automatic devices or to shut down the affected part of the process.

(ii) If, during operation, an automatic alarm or protective device does not function as required, the Corporation shall notify the Commission if required by 76.120, 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 safety requirements until the condition can be met.

(i) If a limiting condition for operation of any process step in the system is not met, the Corporation shall notify the Commission if required by § 76.120, 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.

§ 76.89 Criticality accident requirements.

(a) The Corporation must maintain and operate a criticality monitoring and audible alarm system meeting the requirements of paragraph (b) of this section in all areas of the facility. The Corporation may describe for the approval of the Commission defined areas to be excluded from the monitoring requirement. This submittal must describe the measures that will be used to ensure against criticality, including kinds and quantities of material that will be permitted and measures that will be used to control those kinds and quantities of material.

(b) The system must detect and annunciate 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 monitored areas must be provided by two detectors.

§ 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) must 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 does 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 1 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, Public Law 99–499, or other State or Federal reporting requirements.

(i) Information to be communicated. A brief description of the 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 must familiarize personnel with site-specific emergency procedures. The training must also prepare site personnel for their responsibilities for the accident scenarios postulated as most probable for the specific site, including the use of team training for these accident scenarios.

(k) Safe shutdown. 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 must include the check and update of all necessary telephone numbers. The Corporation shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the accident scenarios must 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 must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(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, Public Law 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 with the initial certification application. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

(o) Changes to emergency plan. The Corporation may make changes to the emergency plan without prior Commission approval if the changes do not decrease the effectiveness of the plan. The Corporation shall furnish these changes to the NRC in accordance with § 76.5 and to affected offsite response organizations within 6 months after the change is made.

§ 76.93 Quality assurance.

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

§ 76.95 Training.

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

(a) Systematic analysis of the jobs to be performed.

(b) Learning objectives derived from the analysis which describe desired performance after training.

(c) Training design and implementation based on the learning objectives.

(d) Evaluation of trainee mastery of the objectives during training.

(e) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

Subpart E—Safeguards and Security

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

Nuclear Regulatory Commission regulations that will be used for certification of the 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, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as uncontrolled classified Nuclear Information.

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

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

(b) The requirements for physical security for formula quantities of strategic special nuclear material (Category I) are contained in §§ 70.22(h), 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 must be protected at a level equivalent to that accorded Safeguards Information.

(d) The Corporation may neither transport Category I material offsite nor deliver Category I material to a carrier for transport offsite.

§ 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 of this chapter.

(b) The requirements for physical security for special nuclear material of moderate strategic significance

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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, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

(Category II) are contained in §§ 73.67, and 73.71 of this chapter.

(c) The Corporation may neither transport Category II material offsite nor deliver Category II material to a carrier for transport offsite.

§ 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 of this chapter. However, inventories of uranium outside of the enrichment processing equipment conducted at least every 370 days are deemed to satisfy the requirements of § 70.51(d).

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

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

The requirements for security facility approval and for safeguarding of classified matter are contained in part 95 of this chapter. For the purpose of this subpart, the term "licensee" or "license" used in part 95 of this chapter means, respectively, the corporation, or the certificate of compliance or approved compliance plan.

Subpart F—Reports and Inspections

§ 76.120 Reporting requirements.

(a) Immediate report. The Corporation shall notify the NRC Operations Center[3] within 1 hour after discovery of:

(1) A criticality event;

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

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

(4) An emergency condition that has been declared an alert or site area 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 prevents 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 through 20.2402 of 10 CFR part 20 for the material; and

(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 decontamination.

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

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

(ii) The equipment is required by a Technical Safety Requirement to be available and operable and either should have been operating or should have operated on demand; and

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

(3) An event that requires unplanned medical treatment at a medical facility of an individual with 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 through 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) Preparation and submission of reports. Reports made by the Corporation in response to the requirements of this section must be made as follows:

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

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

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

(iii) The exact location of the event;

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

(v) Any personnel radiation exposure data available; and

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

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

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

(ii) The exact location of the event;

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

(iv) The date and time of the event;

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

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

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

(viii) Lessons learned from the event.

§ 76.121 Inspections.

(a) The Corporation shall afford to the Commission 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 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

[3] The commercial telephone number for the NRC Operations Center is (301) 816–5100 or (301) 951–0550, FAX (301) 816–5151.

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

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, or the NRC Region III Administrator, 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; and 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 Section 161b or 161i of the Act. For purposes of Section 223, all the regulations in part 76 are issued under Section 161b or 161i except for the sections listed in paragraph (b) of this section.

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

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

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

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 2297f); 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 95.1 is revised to read as follows:

§ 95.1 Purpose.

The regulations in this part establish procedures for obtaining security facility approval and for safeguarding matter revealing Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed or regulated by the Commission. This part does not apply to Top Secret information since no such information may be forwarded to licensees or others within the scope of an NRC license or certificate.

22. 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.

23. Section 95.5 is amended by removing the definitions *Access authorization, "L" access authorization*, and *"Q" access authorization*, and adding the definitions of *NRC access authorization, NRC "L" access authorization*, and *NRC "Q" access authorization*, in alphabetical order to read as follows:

§ 95.5 Definitions.

* * * * *

NRC access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or National Security Information.

NRC "L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquiries and credit investigation (NACIC) conducted by the Office of Personnel Management.

NRC "Q" access authorization means an access authorization granted by the Commission based on a full field investigation conducted by the Office of Personnel Management, the Federal Bureau of Investigation, or other U.S. Government agency which conducts personnel security investigations.

* * * * *

24. In § 95.15, paragraphs (a) and (b) are revised to read as follows:

§ 95.15 Approval for processing licensees and others for security facility approval.

(a) A licensee or other persons subject to part 95 who have a need to use, process, store, reproduce, transmit, or handle matter revealing National Security Information and/or Restricted Data at any location in connection with Commission related activities shall promptly request an NRC security facility approval.

(b) The request must include the following information: The name of the facility; the location of the facility; a security plan outlining the facility's proposed security procedures and controls for the protection of matter revealing National Security Information and/or Restricted Data; a floor plan of the area in which the matter is to be used, processed, stored, reproduced, transmitted, or handled.

* * * * *

25. In § 95.25, the introductory text of paragraph (a) and paragraphs (a)(1) and (2) are revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

(a) *Protection of secret matter.* (1) Secret matter while unattended or not in actual use must be stored in locked security containers protected by an NRC-approved intrusion alarm or by protective personnel.

(2) Protective personnel must be used where matter revealing National Security Information or Restricted Data cannot be adequately safeguarded during working hours by employees or during nonworking hours by an intrusion alarm system. In either case, protective personnel must be capable of responding within 15 minutes.

* * * * *

26. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect National Security Information and/or Restricted Data, they shall:

(a) Possess an "L" access authorization (or Department of Defense or DOE equivalent) if the licensee or other person possesses matter classified as Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a "Q" access authorization (or Department of Defense or DOE equivalent) if the licensee or other person possesses matter classified as Secret Restricted Data and the protective personnel require access as part of their regular duties.

27. Section 95.33 is revised to read as follows:

§ 95.33 Security education.

A security education program must be established and maintained by the licensee or other persons subject to part 95 which employs individuals possessing a U.S. Government personnel security access authorization. The program must include consideration and coverage of personnel access authorization requirements, the physical security features of the facilities, the classified nature of the work, and the classification and sensitivity of the matter. In addition, the program must include an explanation of the contents of the "Classified Information Nondisclosure Agreement" (SF 312) and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. The procedures include verification of the individual's level of access authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. Each security education program must provide for the security orientation and continuing security education of employees, and for the appropriate security instruction of terminating employees. Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for 3 years after termination of the individual's access authorization.

28. Section 95.35 is revised to read as follows:

§ 95.35 Access to matter classified as National Security Information and Restricted Data.

(a) Except as the Commission may authorize, no person subject to the regulations in this part may receive or may permit any individual to have access to matter revealing Secret or Confidential National Security Information or Restricted Data unless the individual has:

(1)(i) A "Q" access authorization which permits access to matter classified as Secret and Confidential Restricted Data or Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information, or

(ii) An "L" access authorization which permits access to matter classified as Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section except that access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

(2) An established "need-to-know" for the matter (See Definitions, § 95.5).

(3) NRC-approved storage facilities if classified documents or material are to be transmitted to the individual.

(b) Matter classified as National Security Information or Restricted Data shall not be released by a licensee or other person subject to part 95 to any personnel other than properly access authorized Commission licensee employees, or other individuals authorized access by the Commission.

(c) Access to matter which is National Security Information at NRC-licensed facilities or NRC-certified facilities by authorized representatives of IAEA is permitted in accordance with § 95.36.

29. In § 95.36, the section heading and paragraphs (a) and (e) are revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the Division of Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA), and that the individual is authorized to make visits or inspections in accordance with the US/IAEA Safeguards Agreement, a licensee or other person subject to part 95 will permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure authorization) to have access to matter which is National Security Information (NSI) which is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee or other persons subject to part 95 to provide access to Restricted Data.

* * * * *

(e) Licensees or other persons subject to part 95, with the prior concurrence of the NRC's Division of Security, shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

30. In § 95.37, the section heading and paragraph (a) are revised to read as follows:

§ 95.37 Classification and marking of matter.

(a) Classification. Licensees or other persons subject to part 95 shall classify and mark classified matter as National Security Information or Restricted Data, as appropriate, in accordance with classification guidance provided by NRC as part of the security facility approval. If a person or facility generates or possesses information which is believed to be classified based on guidance provided by NRC or by derivation from classified matter, but which no authorized classifier has determined to be classified, it must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. This final determination should be made within 30 working days. The licensee or other person subject to part 95 shall protect the matter as National Security Information or Restricted Data of the highest classification at issue while awaiting a final determination.

* * * * *

31. Section 95.41 is revised to read as follows:

§ 95.41 Accountability for Secret matter.

Each licensee or other person subject to part 95 possessing matter classified as Secret National Security Information and/or Restricted Data shall establish an accountability procedure and shall maintain records to show the disposition of such matter. Records reflecting accountability and disposition of classified matter must be maintained for 3 years after its disposition.

32. In § 95.45, paragraph (a) is revised to read as follows:

§ 95.45 Changes in classification.

(a) Matter revealing National Security Information and/or Restricted Data must be downgraded or declassified as authorized by NRC classification guides or as determined by NRC. Requests for downgrading or declassifying any National Security Information and/or Restricted Data should be forwarded to the NRC Division of Security, Office of Administration, Washington, DC 20555. Requests for downgrading or declassifying Restricted Data will be coordinated as appropriate by the NRC Division of Security with the Department of Energy.

* * * * *

33. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter revealing National Security Information and/or Restricted Data.

Matter revealing National Security Information and/or Restricted Data may be destroyed by burning, pulping, or another method that ensures complete destruction of the information or material which it contains. The method of destruction must preclude recognition or reconstruction of the classified matter. Any doubts on methods should be referred to the NRC Division of Security. If the matter reveals Secret National Security Information and/or Restricted Data, a record of the subject or title, document number, if any, originator, its date or origination, its series designation and copy number, and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for 3 years after destruction.

34. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked, the licensee or other persons subject to part 95 shall, upon due notice of such suspension or revocation, retrieve all matter revealing National Security Information and Restricted Data possessed by the individual and take such action as necessary to preclude that individual from having further access to such matter.

35. In § 95.57, paragraph (c) is revised to read as follows:

§ 95.57 Reports.

* * * * *

(c) In addition, an authorized classifier of a licensee or other persons subject to part 95 shall complete an NRC Form 790 (Classification Record) whenever matter revealing National Security Information and/or Restricted Data is generated, its classification is changed, or it is declassified. Notification of declassification is not required for any document or material which has an automatic declassification date. Completed NRC Form 790 should be submitted to the NRC Division of Security, Washington, DC 20555, on a monthly basis.

Appendix A—[Removed]

36. Appendix A to Part 95 is removed in its entirety.

Dated at Rockville, Maryland, this 15th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–23329 Filed 9–22–94; 8:45 am]

BILLING CODE 7590–01–P