

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

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

(c) The Commission may issue orders to secure compliance with the provisions of this part or to prohibit any violation of such provisions as may be proper to protect the common defense and security. Enforcement actions, including proceedings instituted with respect to Agreement State licensees, will be conducted in accordance with the procedures set forth in part 2, subpart B of this chapter. Only NRC licensees, however, are subject to license modification, suspension, or revocation as a result of enforcement action.

[57 FR 55079, Nov. 24, 1992]

§ 75.53 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, or conspiracy to violate, any regulation issued under sections 161b., 161i., or 161o. of the Act. For purposes of criminal sanctions under section 223, all the regulations in Part 75 are issued under one or more of sections 161b., 161i., or 161o., except as provided in paragraphs (b) and (c) of this section.

(b) The regulations in Part 75 that are not issued under sections 161b, 161i., or 161o for the purposes of section 223 are as follows: §§ 75.1, 75.2, 75.3, 75.4, 75.5, 75.7, 75.9, 75.12, 75.15, 75.46, 75.51, and 75.53.

(c) Any provision in Part 75 that implements the "Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America," known as the "Additional Protocol," signed by the United States on June 12, 1998, is not issued under sections 161b., 161i., or

161o, for the purposes of criminal sanctions under section 223.

[73 FR 78614, Dec. 23, 2008]

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

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AUTHORITY: Atomic Energy Act of 1954, secs. 122, 161, 193(f), 223, 234, 1701 (42 U.S.C. 2152, 2201, 2243(f), 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206, 211 (42 U.S.C. 5841, 5846, 5851); 44 U.S.C. 3504 note.

Section 76.22 is also issued under Atomic Energy Act sec. 193(f) (42 U.S.C. 2243(f)).

Section 76.35(j) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

SOURCE: 59 FR 48960, Sept. 23, 1994, unless otherwise noted.

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 Reor-

ganization 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, record-keeping, 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.

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

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 U₂₃₅ 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 by-product 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 off-site.

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

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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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6669, Feb. 12, 1997]

§ 76.5 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent as follows:

(a) By mail addressed to: ATTN: Document Control Desk, Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001;

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or

(c) Where practicable, by electronic submission, for example, Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a

time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of non-public information.

(d) Classified communications shall be transmitted in accordance with § 95.39 of this chapter to the NRC Headquarters' classified mailing address listed in appendix A to part 73 of this chapter or delivered by hand in accordance with § 95.39 of this chapter to the NRC Headquarters' street address listed in appendix A to part 73 of this chapter.

[68 FR 58822, Oct. 10, 2003, as amended at 74 FR 62685, Dec. 1, 2009; 80 FR 74981 Dec. 1, 2015]

§ 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

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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) Imposition of a civil penalty on the Corporation or a contractor or subcontractor of the Corporation.

(3) Other enforcement action.

(d) Actions taken by an employer or others which adversely affect an employee may be predicated upon non-discrimination 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 non-prohibited 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 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, via email to Forms.Resource@nrc.gov, or by visiting the NRC's online library at <http://www.nrc.gov/reading-rm/doc-collections/forms/>.

(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

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his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

[59 FR 48960, Sept. 23, 1994, as amended at 60 FR 24553, May 9, 1995; 63 FR 15744, Apr. 1, 1998; 64 FR 44649, Aug. 17, 1999; 68 FR 58822, Oct. 10, 2003; 72 FR 63975, Nov. 14, 2007; 73 FR 30460, May 28, 2008; 79 FR 66606, Nov. 10, 2014]

§ 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 (44 U.S.C. 3501 *et seq.*).

[62 FR 52190, Oct. 6, 1997]

§ 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.

[59 FR 48960, Sept. 23, 1994, as amended at 64 FR 44649, Aug. 17, 1999]

§ 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.

(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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6669, Feb. 12, 1997]

§ 76.21 Certificate required.

(a) 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 under this part. Unless authorized by the NRC under other provisions of this chapter, a person other than the Corporation or its contractors may not acquire, deliver, receive, possess, use, or transfer radioactive material at the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky.

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(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6669, Feb. 12, 1997; 64 FR 44649, Aug. 17, 1999]

§ 76.22 Ineligibility of certain applicants.

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

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

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

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

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

[62 FR 6670, Feb. 12, 1997]

§ 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.

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§ 76.31 Periodic application requirement.

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

[62 FR 6670, Feb. 12, 1997]

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§ 76.33 Application procedures.

(a) *Filing requirements.* (1) An application for a certificate of compliance must be tendered by filing the application with the Director of the NRC's 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. If the application is to be submitted electronically, see Guidance for Electronic Submissions to the Commission at <http://www.nrc.gov/site-help/e-submittals.html>.

(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, the application must indicate the State where it was incorporated or organized; the location of the principal office; and the names, addresses, and citizenship of its principal officers. The applicant shall include any known information 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 a 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 before filing an application.

(d) *Additional information.* At any time during the review of an application, the Corporation may be required to supply additional information to the Commission's staff 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.* If an application contains Restricted Data, National Security Information, Safeguards Information, Unclassified Controlled Nuclear Information, proprietary data, or other withholdable information, the applicant shall ensure that the withholdable information is separate from the information to be made publicly available.

[64 FR 44649, Aug. 17, 1999, as amended at 68 FR 58822, Oct. 10, 2003; 74 FR 62685, Dec. 1, 2009]

§ 76.35 Contents of application.

The application for a 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 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 non-compliance;

(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.

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(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.

(1)(1) In response to a written request by the Commission, each applicant for a certificate and each recipient of a certificate shall submit facility information, as described in § 75.10 of this chapter, on Form N-71 and associated forms and site information on DOC/NRC Form AP-A and associated forms;

(2) As required by the Additional Protocol, shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP-1 and associated forms; and

(3) Shall permit verification thereof by the International Atomic Energy Agency (IAEA); and shall take other action as may be necessary to implement the US/IAEA Safeguards Agree-

ment, as described 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 periodic application for certification.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997; 64 FR 44649, Aug. 17, 1999; 73 FR 78614, Dec. 23, 2008]

§ 76.36 Renewals.

(a) The Corporation shall file periodic applications 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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997; 64 FR 44649, Aug. 17, 1999]

§ 76.37 Federal Register notice.

The Director may, at his or her discretion, 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 at the NRC Web site, <http://www.nrc.gov>;

(b) A notice of opportunity for written public comment on the application for renewal; and

(c) The date of any scheduled public meeting regarding the application for renewal.

[64 FR 44649, Aug. 17, 1999, as amended at 64 FR 48955, Sept. 9, 1999]

§ 76.39 Public meeting.

(a) A public meeting will be held on an application for renewal 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 for renewal.

(b) Conduct of public meeting.

(1) The Director shall conduct any public meeting held on the application for renewal.

(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 for renewal 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.

[59 FR 48960, Sept. 23, 1994, as amended at 64 FR 44649, Aug. 17, 1999]

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§ 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 2.390.

[59 FR 48960, Sept. 23, 1994, as amended at 69 FR 2281, Jan. 14, 2004]

§ 76.43 Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decisions and publishes notice of the new date in the FEDERAL REGISTER.

[62 FR 6670, Feb. 12, 1997]

§ 76.45 Application for amendment of certificate.

(a) *Contents of an amendment application.* In addition to the application for certification submitted under § 76.31, the Corporation may at any time apply for an amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the NRC to make findings of compliance or acceptability for the proposed activities in the same manner as was required for the original certificate.

(b) *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.

(c) *Amendment application determinations.* If the NRC staff approves an application for a certificate amendment, it will be effective on a date specified by the NRC staff. If an application for a certificate amendment is not approved by the NRC staff, the Corporation will be informed in writing. The NRC staff may, at its discretion, publish notice of its determination on an amendment application in the FEDERAL REGISTER.

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(d) *Request for review of staff's determination on an amendment application.* The Corporation, or any person whose interest may be affected, may file a petition requesting the Director's review of an NRC staff determination on an amendment application. A petition requesting the Director's review may not exceed 30 pages and must be filed within 30 days after the date of the NRC staff's determination. Any person described in this paragraph may file a written response to a petition requesting the Director's review. This response may not exceed 30 pages and must be filed within 15 days after the filing date of the petition requesting the Director's review. The Director may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the NRC staff's amendment determination by providing a written basis for the action. If the Director does not issue a decision or take other appropriate action within 60 days after receiving the petition for review, the NRC staff's determination on the amendment application remains in effect.

(e) *Request for review of a Director's decision.* The Corporation, or any person whose interest may be affected and who filed a petition for review or filed a response to a petition for review under § 76.45(d), may file a petition requesting the Commission's review of a Director's decision on an amendment application.

(1) A petition requesting the Commission's review may not exceed 30 pages and must be filed within 30 days after the date of the Director's decision. A petition requesting the Commission's review may be either:

(i) Delivered to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) Sent by mail or telegram to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(2) Any person described in paragraph (e) of this section may file a written response to a petition requesting the Commission's review. This response may not exceed 30 pages and must be

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filed within 15 days after the filing date of the petition requesting the Commission's review.

(3) The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision. The Commission may adopt, modify, or set aside the findings, conclusions, conditions, or terms in the Director's amendment review decision and will state the basis of its action in writing. If the Commission does not issue a decision or take other appropriate action within 90 days after receiving the petition for review, the Director's decision, under § 76.45(d), on the amendment application remains in effect.

[64 FR 44649, Aug. 17, 1999]

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 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.

[62 FR 6670, Feb. 12, 1997]

§ 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) [Reserved]

(2) The Corporation shall post NRC Form 3 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) [Reserved]

(2) The Corporation shall comply with the requirements in this part 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.

(2) Under § 21.31, procurement documents issued by the Corporation 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 § 26.4(d)(1) through (5), of this chapter.

(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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997; 64 FR 44650, Aug. 17, 1999; 74 FR 45545, Sept. 3, 2009]

§ 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, 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 30 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 15 days after the filing of the petition. If the Commission does not issue a decision or take other appropriate action within 90 days after the publication of the FEDERAL REGISTER notice, the Director’s decision remains in effect. 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.

[59 FR 48960, Sept. 23, 1994, as amended at 64 FR 44650, Aug. 17, 1999]

§ 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

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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, may file a petition for review, not to exceed 30 pages, requesting review of the Director's decision. This petition for review must be filed with the Commission not later than 30 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 15 days after the filing of the petition for review. If the Commission does not issue a decision or take other appropriate action within 90 days after the publication of the FEDERAL REGISTER notice, the Director's decision remains in effect. 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.

[59 FR 48960, Sept. 23, 1994, as amended at 64 FR 44650, Aug. 17, 1999]

§ 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 ac-

tivities authorized under the certificate.

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

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997]

§ 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 before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

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(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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997]

§ 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 other-

wise, 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 C, G or L of this chapter. Submission of

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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.

[59 FR 48960, Sept. 23, 1994, as amended at 69 FR 2281, Jan. 14, 2004]

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses to these petitions are governed by the procedural requirements set forth in 10 CFR 2.302(a) and (c), 2.304, 2.305, 2.306, and 2.307. 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 2.346.

(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 2.347 and 2.348 apply to proceedings under 10 CFR Part 2 for imposition of a civil penalty.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subparts C, G, L and N will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Non-compliance), as authorized by section

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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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997; 69 FR 2281, Jan. 14, 2004]

§ 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 (b) 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,

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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.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6671, Feb. 12, 1997]

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;

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(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

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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 contemplated. The assessment must be performed using an expected release rate resulting from anticipated operational occurrences and accidents with existing systems and procedures intended to mitigate the release consequences, along with site characteristics, including meteorology, to evaluate the offsite radiological consequences.

§ 76.87 Technical 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.

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(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, ap-

propriate 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 announce 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(f) 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

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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 that are expected to respond in case of an accident 60 days to comment on the emergency plan before submitting it to NRC. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

(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.

[59 FR 48960, Sept. 23, 1994, as amended at 64 FR 44650, Aug. 17, 1999]

§ 76.93 Quality assurance.

The Corporation shall establish, maintain, and execute a quality assur-

ance 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 Corporation² for physical security and material control and accounting are contained in title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special

²For 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.

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nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

[62 FR 6671, Feb. 12, 1997]

§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 §§74.11, 74.13, 74.15, 74.17, 74.19, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 of this chapter.

(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 quantities of strategic special nuclear material (Category I) are contained in §§73.21 and 73.22 of this chapter. Information designated by the U.S. Department of Energy (DOE) as Unclassified Controlled Nuclear Information must be protected in accordance with DOE requirements.

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

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6671, Feb. 12, 1997; 67 FR 78149, Dec. 23, 2002; 73 FR 63581, Oct. 24, 2008]

§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 §§74.11, 74.13, 74.15, 74.17, 74.19, 74.41, 74.43, 74.45, 74.81, and 74.82 of this chapter.

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

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

(d) The requirements for the protection of Safeguards Information pertaining to special nuclear material of moderate strategic significance—Category II are contained in §§73.21 and 73.22 of this chapter. Information designated by the U.S. Department of Energy (DOE) as Unclassified Controlled Nuclear Information must be protected in accordance with DOE requirements.

[59 FR 48960, Sept. 23, 1994, as amended at 67 FR 78149, Dec. 23, 2002; 73 FR 63581, Oct. 24, 2008]

§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 §§74.11, 74.13, 74.15, 74.17, 74.19, 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 §74.19(c).

(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.

(c) The requirements for the protection of Safeguards Information pertaining to special nuclear material of low strategic significance—Category III are contained in §§73.21 and 73.22 of this chapter. Information designated by the U.S. Department of Energy (DOE) as Unclassified Controlled Nuclear Information must be protected in accordance with DOE requirements.

[59 FR 48960, Sept. 23, 1994, as amended at 67 FR 78149, Dec. 23, 2002; 73 FR 63581, Oct. 24, 2008]

§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 Center³ 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 event⁴ 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

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

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

(iii) Causes access to the contaminated area to be restricted for any reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to 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;

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(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 NRC by an appropriate method listed in § 76.5. 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.

[59 FR 48960, Sept. 23, 1994, as amended at 68 FR 58822, Oct. 10, 2003]

§ 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

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.

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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) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, for violations of:

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

(2) Section 206 of the Energy Reorganization Act;

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

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

[62 FR 6671, Feb. 12, 1997]

§ 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 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

GENERAL PROVISIONS

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AUTHORITY: Atomic Energy Act of 1954, secs. 156, 161 (42 U.S.C. 2186, 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

SOURCE: 38 FR 7318, Mar. 20, 1973, unless otherwise noted.

GENERAL PROVISIONS

§ 81.1 Purpose.

The regulations of this part establish the standard specifications for the issuance of licenses to rights in inventions covered by patents or patent applications vested in the United States of America, as represented by or in the custody of the Commission and other patents in which the Commission has the right to accord or require the grant of licenses.

[40 FR 8793, Mar. 3, 1975]

§ 81.2 Definitions.

As used in this part:

(a) *Act* means the Atomic Energy Act of 1954 (68 Stat. 619), including any amendments thereto;

(b) *Commission* means the Nuclear Regulatory Commission as established by the Act, or its duly authorized designee. The Assistant General Counsel