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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

ON THE U.S. URANIUM ENRICHMENT SERVICES PROGRAM

Mr. Chairman and members of the Subcommittee, we appreciate the opportunity to present our views on the U.S. uranium enrichment program. At your request, our testimony today focuses on the Department of Energy's (DOE's) recent revisions to the Uranium Enrichment Services Criteria--the rules under which DOE provides enrichment services. Before presenting our views on the new criteria, however, I would like to place in perspective the situation DOE faces in managing the enrichment program.

Today's uranium enrichment market is considerably different from the one that existed in 1970 when the Congress mandated that the government's costs of providing enrichment services be recovered over a reasonable period of time. Lower prospects for

nuclear power growth coupled with foreign competition, the emergence of a secondary market for enriched uranium, and high prices have led to a steady deterioration of DOE's competitive position. To help curtail this situation, DOE has undertaken a number of initiatives that have affected the repayment of the government's unrecovered enrichment costs. For example, in fiscal year 1984, DOE wrote off $1.2 billion of the remaining unrecovered government costs in the gaseous diffusion enrichment facilities. As indicated in our past reports and testimonies, some of DOE's initiatives conflict with our interpretation of the cost-recovery requirement stated in the enrichment program's governing statute--subsection 161(v) of the Atomic Energy Act of 1954, as amended.

Because of the conflict between DOE's initiatives and our interpretation of the act, we have suggested on several occasions that the Congress and the executive branch need to reevaluate the fundamental purpose and structure of the uranium enrichment program. We continue to support a review of this nature.

On January 29, 1986, DOE released for public comment a proposed modification of the enrichment criteria representing its view on the appropriate enrichment program objectives and structure for today's enrichment environment. On July 24, 1986, DOE issued its revised criteria in final form and transmitted the criteria to the Congress for a 45-day review period as required by law. DOE's criteria reflects a shift from full cost recovery and standard contractual terms to increased emphasis on competition,

recovery of less than all of the government's costs, and individually tailored contract terms and conditions. Because of this, we have concerns about:

--areas where the revised criteria, in our view, conflict with basic statutory requirements and may limit future congressional oversight of the enrichment program and

--the appropriateness of using modifications to the criteria to make major program changes as opposed to a legislative proposal and the related implications for the effectiveness of congressional involvement in the change process.

LEGALITY OF DOE's REVISED CRITERIA AND EFFECT ON CONGRESSIONAL OVERSIGHT

Three provisions in the revised criteria, in our view, conflict with the statutory requirements governing the enrichment program. First, the Atomic Energy Act requires DOE to recover all of the government's costs of providing enrichment services over a reasonable period of time. In contrast, the revised criteria states that DOE will collect and repay to the Treasury about $3.4 billion of what DOE estimates is $7.5 billion in unrecovered government costs as of the end of fiscal year 1985. The remaining $4.1 billion, which primarily consists of the investment in the gas centrifuge project and most of the undepreciated portion of recent improvements to the three operable gaseous diffusion plants, would not be recovered. Second, the criteria state that DOE will establish charges for enrichment services on a basis that recovers "appropriate" government costs over a reasonable period

of time. This permits DOE to determine that some future government enrichment costs are not appropriate for recovery. DOE believes that the Act and its legislative history provides it with this flexibility. In our opinion, a criteria change by itself does not provide sufficient legal grounds for not recovering all of the government's past and future enrichment costs from customers.[1] Third, the act requires DOE to set out in written criteria the terms and conditions under which it will provide enrichment services. In establishing this requirement, reports of the former Joint Committee on Atomic Energy stated that the "general features of standard contracts for uranium enrichment services" were to be set forth in the criteria. DOE's revised criteria, however, do not do this but provide that individual contracts will be tailored to each customer's needs. This eliminates the standardization which the Committee intended.

Furthermore, while obviously not precluding congressional oversight of the enrichment program, these and other flexible features of the revised criteria will make oversight difficult. The criteria have been written to provide DOE maximum flexibility to operate the enrichment program, and they have few feedback provisions or accountability measures. For example, DOE would negotiate contract terms and prices on a customer-by-customer basis, prices would no longer be directly tied to recovery of the government's enrichment costs, and DOE would reserve to itself the

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[1]GAO letter to the Chairman, House Committee on Energy and Commerce dated December 27, 1984 (B-207463) and GAO letter to the Chairman, Subcommittee on Energy Conservation and Power, House Committee on Energy and Commerce dated February 19, 1986 (B-207463).

prerogative of determining what government costs are appropriate for recovery through its prices.

Given this flexibility, benchmarks that have been useful in the past to monitor the program, such as a clear definition of what costs should be recovered, how prices will be determined, and the general approach to contract terms, would be removed. Moreover, it is entirely possible that with this flexibility DOE would never again have to propose criteria changes and lay them before the Congress for review.

Now, Mr. Chairman, I would like to discuss why, in addition to our legal and oversight concerns, we believe that these criteria changes are an inappropriate vehicle for effecting such major enrichment program changes.

APPROPRIATENESS OF USING
A CRITERIA REVISION

We believe that legislation amending the Atomic Energy Act, rather than modification of the criteria, is the correct approach for effecting change in the uranium enrichment program of the scope embodied in DOE's revised criteria. If the criteria were accepted, the statutory requirement that DOE recover the government's full costs of providing enrichment services would be relegated to a secondary objective, and the program's new primary objective would become the maintenance of a long-term competitive position. If such a major program redirection is necessary, it should only occur, we believe, through legislation and with a more meaningful opportunity for congressional input than is permitted

by a criteria revision with the limited 45-day period permitted for congressional review of the criteria.

In making full recovery of the government's costs of providing enrichment services subservient to maintenance of DOE's competitive position, the new criteria establish a one-time subsidy by excluding from costs to be recovered from enrichment customers over $4 billion in prior government costs. The criteria also introduce the opportunity for future subsidies by permitting DOE to determine what government costs are and are not "appropriate" for recovery from customers. In this regard, past and potential events indicate a real possibility of additional future government subsidies.

In response to expectations that demand for DOE enrichment services would exceed capacity, in the 1970's the Congress authorized major improvements to the three existing enrichment plants and construction of the gas centrifuge enrichment facility. Because the demand never materialized, however, one of the improved plants is now idle, DOE is operating the other two plants at reduced levels, and the centrifuge facility has been cancelled. It is the costs associated with these improvements and new construction that make up the $4 billion subsidy I spoke of earlier.

Looking forward, we see the nation's enrichment program continuing to operate in an environment of uncertain cost and revenue expectations. For example, the cost to decommission and decontaminate one of the existing three enrichment facilities has

been estimated by a DOE enrichment contractor to be as high as $1 billion or more, depending on the decommissioning method selected. Under DOE's new criteria, it is uncertain how much, if any, of these future costs would either be recovered from DOE's customers or borne by the government. In addition, future research, development, and capital expenditures on an advanced enrichment technology which, because of unforeseen circumstances, might not be used to provide enrichment services could also be excluded on grounds that they are not "appropriate" costs for recovery from customers.

Furthermore, future program revenues will be affected by enrichment demand that generates revenues. Demand and revenue projections are likely to continue to be affected by uncertainties over the future of nuclear power in the United States and other countries. In addition, because worldwide enrichment capacity is expected to continue to exceed demand, DOE is likely to continue to face severe competition from foreign enrichers.

While I have told you about the cost side of the enrichment program, and the potential for significant government subsidies, the benefit side should also be considered. In the supplemental information provided with the criteria, and elsewhere such as in the National Energy Policy Plan, DOE points out that a competitive enrichment program will contribute to important national objectives such as nuclear nonproliferation goals, domestic energy independence, and the U.S. balance of payments.

While we agree with DOE that the enrichment program contributes to these national objectives, these contributions need to be placed in perspective. For example, nonproliferation objectives are pursued through diplomatic initiatives, such as treaties and agreements for cooperation, as well as systems for regulating nuclear exports. Similarly, the role that nuclear power will play in achieving the objective of energy independence will be primarily determined by the outcome of the continuing debate on the economics and safety of nuclear power. Uranium enrichment is but one element in determining the economics of nuclear power. Finally, regarding balance of payments, it is important to recognize how much DOE's enrichment exports contribute to the nation's total export revenues. From 1971 through 1984, for example, DOE's enrichment exports averaged about $400 million per year, or approximately two-tenths of one percent of total U.S. export revenues.

Because of the importance of these national objectives, and because the program DOE proposes will require government subsidization in order to contribute to the objectives, we believe the Congress should be involved in enrichment program decisions of the type embodied in the revised criteria. In addition, we believe Congress needs to assist in the decision as to whether or not the benefits the nation receives from the enrichment program are worth the costs.

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In closing, Mr. Chairman, let me make several points. DOE's revised criteria place in the public record DOE's objectives for

the program, the flexibility it believes it needs for competing in the world marketplace, and a clear position on the amount of prior unrecovered government costs it plans to recover from customers. We have consistently stated that these issues need to be considered in any reevaluation of the uranium enrichment program.

As our testimony today states, however, we believe that program changes involving such a major redirection of the uranium enrichment program should be accomplished by legislative changes with criteria subsequently developed that flow logically from and are consistent with the legislation. We have also highlighted areas where we believe the proposed criteria are in conflict with existing legislation and could possibly limit effective congressional oversight.

If the Congress, having been made aware of DOE's criteria revisions and our concerns, takes no action to require change of the criteria, it would be difficult for GAO to raise objections about future DOE actions that are consistent with the revised criteria, absent further legislative direction by the Congress.

Mr. Chairman, this concludes my prepared remarks. I will be happy to respond to any questions at this time.