

**6450-01-P**

**DEPARTMENT OF ENERGY**

Instructions for Requesting a Waiver from the Secretary of Energy for the Import of Russian Low-Enriched Uranium (LEU) into the United States

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of availability.

**SUMMARY:** DOE is announcing a process and related instructions for entities to request a waiver to permit imports of Russian LEU following enactment of a law prohibiting such imports without a waiver.

**DATES:** This action will become effective immediately on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**FOR FURTHER INFORMATION CONTACT:** Rory Stanley, Chief of Staff, Office of Nuclear Energy, Department of Energy, Phone: (202) 586-2240, Email: uraniumwaiver@nuclear.energy.gov.

**SUPPLEMENTARY INFORMATION:**

***Background***

On May 13, 2024, President Biden signed the Prohibiting Russian Uranium Imports Act, (“the Act”), which amends Section 3112A of the USEC Privatization Act, codified at 42 U.S.C.

2297h-10a (“Section 3112A”).<sup>1</sup> The Act adds a new subsection (d) to 3112A prohibiting the import of Russian LEU into the United States beginning on August 11, 2024. The Act specifies that two types of Russian LEU are subject to the import prohibition: (1) unirradiated LEU produced in the Russian Federation or by a Russian Entity, and (2) unirradiated LEU that is determined to have been exchanged with, swapped for, or otherwise obtained in lieu of unirradiated LEU produced in the Russian Federation or by a Russian Entity in a manner designed to circumvent the restrictions under 42 U.S.C. 2297h-10a(d).

The Act authorizes the Secretary of Energy, in consultation with the Secretary of State and the Secretary of Commerce, to waive temporarily the prohibition and permit the importation of Russian LEU if the Secretary of Energy determines that: “(i) no alternative viable source of [LEU] is available to sustain the continued operation of a nuclear reactor or a United States nuclear energy company; or (ii) importation of [LEU] described in [42 U.S.C. 2297h-10a(d)(1)] is in the national interest.” 42 U.S.C. 2297h-10a(d)(2)(A)(i)-(ii). In granting a waiver, the Secretary of Energy must submit a notification of such action, including the identification of the waiver recipient, to the following Congressional committees: the Senate Committee on Energy and Natural Resources, the Senate Committee on Finance, the House Committee on Energy and Commerce, and the House Committee on Ways and Means. 42 U.S.C. 2297h-10(a)(d)(2)(D). Any waiver by the Secretary of Energy under this provision will terminate not later than January 1, 2028. 42 U.S.C. 2297h-10a(d)(2)(C).

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<sup>1</sup> Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329, div. C, tit. VIII, sec. 8118 (Sept. 30, 2008) (amending USEC by adding a new Sec. 3112A (Incentives for Additional Downblending of Highly Enriched Uranium by the Russian Federation)).

Additionally, the Act amends Section 3112A (which codified the export limits and other provisions in the latest amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Russian Suspension Agreement))<sup>2</sup> by eliminating the prior provisions delineating the annual import limits through calendar year 2040 and replacing them with annual import limitations covering only calendar years 2024 through 2027. 42 U.S.C. 2297h-10a(d)(2)(B)(i). The annual limits for these years are identical to the limits of the deleted sections of the prior version of Section 3112A for those same calendar years. Consistent with the Act, the specific limits for calendar years 2024-2027 are as follows:

**Russian LEU Importation Limits**

Calendar Year	Importation Limit (in kilograms)
2024	476,536
2025	470,376
2026	464,183
2027	459,083

The Secretary of Energy cannot grant waivers for the import of aggregate annual amounts of Russian LEU in excess of these limits. 42 U.S.C. 2297h-10a(d)(2). The Act makes the Secretary of Commerce responsible for administering and enforcing these import limitations in accordance with the provisions of the Russian Suspension Agreement. 42 U.S.C. 2297h-10a(d)(2)(B)(ii).

***Waiver Procedures and Requirements***

As previously described, the Secretary of Energy, in consultation with the Secretary of State and Secretary of Commerce, may grant temporary waivers authorizing the import of

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<sup>2</sup> See 2020 Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation, 85 FR 64112 (October 9, 2020). The export limits and certain other provisions of the amended Russian Suspension Agreement were codified in Section 3112A of the USEC Privatization Act, which details the limits applying to the importation of uranium from the Russian Federation. See Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. Z, tit. II, sec. 2007, Extension and Expansion of Limitations on Importation of Uranium from Russian Federation (Dec. 27, 2020).

specific quantities of Russian LEU into the United States taking place from August 11, 2024 until January 1, 2028, provided that the quantities of those imports do not exceed the limits set forth in 42 U.S.C. 2297h-10a(d)(2)(B)(i). The Secretary of Energy may grant such waivers if the Secretary determines that: (i) no alternative viable source of LEU is available to sustain the continued operation of a nuclear reactor or a U.S. nuclear energy company; or (ii) importation of Russian LEU is in the national interest. 42 U.S.C. 2297h-10a(d)(2)(A)(i)-(ii).

The Act does not define what constitutes an alternative viable source. DOE notes that planning for a reactor refueling involves long lead times and a need for certainty concerning the availability of the fuel to support the refueling. Thus, an alternative source needs to be identified and secured many months prior to a scheduled refueling. This timing issue is necessarily a significant factor in determining whether an alternative source is available. In addition, DOE does not interpret viable to mean that the terms and conditions, including price, of an alternative source must be the same as the prohibited Russian import but rather that the terms and conditions must be reasonable in the context of overall market conditions.

DOE does not consider the American Assured Fuel Supply (AAFS) as an alternative viable source for purposes of determining whether to grant a waiver. Thus, an application to purchase material from the AAFS is not a prerequisite to apply for a waiver under 42 U.S.C. 2297h-10a(d). These two processes are separate and distinct.

The Act also does not define what constitutes an import that is in the national interest. With respect to waiver requests under consideration by DOE, Department of State, and Department of Commerce, there is a presumption that an import will be in the national interest if: (1) the import is necessary to maintain the viability of a U.S. nuclear energy company that is critical to the U.S. nuclear energy fuel chain; or (2) the import is intended to support an existing

arrangement to provide fuel for a nuclear power plant in another country and thus minimize the likelihood of that country seeking a non-U.S. fuel supplier. DOE believes it is important to the national interest to keep existing elements of the domestic fuel chain infrastructure in operation and to focus on expanding domestic fuel chain capacity. DOE also believes it is important to the national interest to maintain supply relationships with end-users in other countries while additional LEU capacity is being developed. In addition, waiver applicants may identify other situations that they believe may be in the national interest for consideration by the Secretary of Energy.

DOE notes that the Act provides that LEU imported from a country other than Russia is considered Russian LEU if the LEU is determined to have been exchanged with, swapped for, or otherwise obtained in lieu of unirradiated LEU that was produced in the Russian Federation or by a Russian entity in a manner designed to circumvent the restrictions under 42 U.S.C. 2297h-10(d). With respect to waiver requests under consideration by DOE, Department of State, and Department of Commerce, there will be a presumption against imports which result from efforts to circumvent the ban on imports of Russian LEU. Note that the need to consider whether an import from a country other than Russia might involve Russian LEU applies to all imports.

A waiver granted by the Secretary of Energy only relates to the prohibition on importation of Russian LEU established by the new section 3112A(d). Such a waiver does not affect any other statutory or regulatory requirement relating to the importation of Russian LEU, including requirements for Nuclear Regulatory Commission (NRC) licenses to import and possess Russian LEU, and for U.S. Department of Commerce approval of contracts, as required, and shipments under the Russian Suspension Agreement.

### ***Examples of Scenarios Likely Warranting Waivers***

The following examples describe situations where a waiver would likely be appropriate.

*Example 1 – No Alternative Viable Source: Applicant/Importer is an End User.* With respect to a request from an end user for a waiver allowing the import of Russian LEU, the applicant demonstrates that: (1) it has a signed contract (approved by the U.S. Department of Commerce) to receive the Russian LEU; (2) such LEU will support a near-term refueling of a domestic nuclear power plant to prevent gaps or reductions in operation due to uncertainty about the availability of fuel when needed; and (3) it has made a good faith effort to obtain the LEU from an alternative source and has been unable to obtain such LEU from an alternative source for reasonable terms and on a schedule needed to sustain the continued operation of its domestic nuclear reactor with no gaps or reductions in operation due to uncertainty about the availability of fuel when needed.

*Example 2 – No Alternative Viable Source: Applicant/Importer is a U.S. Nuclear Energy Company, Domestic Distribution.* For a waiver request from a U.S. nuclear energy company for an import of Russian LEU for domestic distribution, the company demonstrates that it: (1) has a signed contract (approved by the U.S. Department of Commerce, as required under the Russian Suspension Agreement) to receive the Russian LEU; (2) has a signed contract (approved by the U.S. Department of Commerce, as required under the Russian Suspension Agreement) to supply a domestic end user with Russian LEU; (3) shows that such Russian LEU will support a near-term refueling of a domestic nuclear power plant to prevent gaps or reductions in operation due to uncertainty about the availability of fuel when needed; and (4) has made a good faith effort to obtain the LEU from an alternative source and has been unable to obtain LEU from an

alternative source for reasonable terms and on the schedule needed to satisfy the terms and conditions of an existing contract to supply LEU for the operation of a domestic nuclear reactor.

*Example 3 – National Interest: Applicant/Importer is a U.S. Nuclear Energy Company, Foreign Distribution.* For a waiver request from a U.S. nuclear energy company for imports for processing and re-export, the company demonstrates that it: (1) has a signed contract to receive the Russian LEU; and (2) has an existing signed contract to supply the Russian LEU to an end user in another country prior to January 1, 2028.

*Example 4 – National Interest: Applicant/Importer is a U.S. Nuclear Energy Company Critical to the U.S. Nuclear Energy Supply Chain.* For a waiver request from a U.S. nuclear energy company for imports for domestic or foreign distribution, the company demonstrates that it is a critical part of the U.S. nuclear energy supply chain, and, in the absence of a waiver, it would not be able to stay in business. The company must demonstrate that it has the relevant signed contract(s) approved by the U.S. Department of Commerce, as required under the Russian Suspension Agreement.

### ***Instructions for Requesting a Waiver***

Entities seeking a waiver by the Secretary of Energy for import of Russian LEU during the period from August 11, 2024 until January 1, 2028, must follow the instructions below:

1. Applicants requesting a waiver should submit their request to: Chief of Staff, Office of Nuclear Energy, Department of Energy, 1000 Independence Avenue SW, Washington DC 20585, phone: (202) 586-2240; Email: uraniumwaiver@nuclear.energy.gov. It is recommended that requests be submitted electronically via email. Please include “Request for a Waiver to Permit Imports of Russian LEU” in the subject line.

2. The request should contain at a minimum the following information:
  - a. Name, address, and contact information of the applicant and, if applicable, the separate end user for whom the applicant is seeking to import the Russian LEU;
  - b. For the U.S. consignee, the license number and expiration date of the NRC or Agreement State license that authorizes the U.S. consignee to receive and possess the Russian LEU to be imported;
  - c. Date of anticipated entry into the U.S. of the Russian LEU for which a waiver is sought;
  - d. Amounts and assays of, and intended use of, the Russian LEU for which a waiver is sought;
  - e. For domestic distribution, whether the applicant has an existing signed contract approved by the U.S. Department of Commerce, as required under the Russian Suspension Agreement, for purchase of such LEU, and, if the applicant is not the end user, whether the applicant has an existing signed contract with a domestic end user approved by the U.S. Department of Commerce, as required under the Russian Suspension Agreement, and if any such contract(s) exists, the duration of such contracts, and any other relevant terms and conditions;
  - f. For foreign distribution, whether the applicant has an existing signed contract to receive the Russian LEU; and an existing signed contract to supply the Russian LEU to an end user in another country prior to January 1, 2028.
  - g. If applicable, the date that fuel is needed by an end user to avoid an interruption or gap in continued operation of a nuclear reactor or U.S. nuclear energy company;



- h. The approximate date(s) of the import(s) of Russian LEU for which the applicant is requesting the waiver(s), with no request for any import on or after January 1, 2028;
- i. For a request for a waiver based on a demonstration of no alternative viable source of LEU, a detailed description of reasonable efforts made to obtain an alternative source of LEU, together with a detailed explanation of why the applicant was not able to obtain an alternative source of LEU available on reasonable terms and on the schedule needed to sustain the continued operation of a nuclear reactor or U.S. nuclear energy company. Given the long lead times associated with planning a reactor refueling and the need for certainty concerning the availability of fuel, the level of documentation and evidence needed to support a demonstration of no alternative viable source of LEU will necessarily increase for imports associated with refuelings later in time since the applicant will have had more time to find an alternative source of LEU;
- j. For a request for a waiver in the national interest, a detailed description of why the applicant believes the importation of the Russian LEU is in the national interest;
- k. For a request for a waiver applying to an import for foreign distribution, the expected date on which fuel will be exported to an end user in another country;
- l. A description of the impact, including the timing of such impact, if a waiver is not granted and the Russian LEU cannot be imported; and
- m. Any other information that the applicant believes could assist the Secretary of Energy in making the waiver determination.

3. Requests for a waiver may be submitted at any time after the issuance of this Notice.
4. After review, DOE may request additional information from an applicant.

DOE will endeavor to decide whether to grant a waiver as soon as practical following receipt of sufficient documentation but expects a minimum processing period (including consultation with the Secretary of State and the Secretary of Commerce) of 30 days from receipt of the waiver request to DOE issuing a waiver determination. As noted previously, the level of documentation necessary to support a waiver will vary depending on the date of the refueling associated with a particular import. Any waiver granted shall terminate not later than January 1, 2028, and no requests for a waiver or for extension of a waiver will be accepted or granted after that date.

### ***Confidential Business Information***

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and the information will be treated in accordance with this determination. As appropriate, DOE will provide all information submitted by the applicant to the Department of State and the Department of Commerce for purposes of consultation.

### ***Definitions***

The terms “applicant” and “importer” mean any U.S. person who is a uranium broker, end user of Russian LEU, or any other U.S. person who will add value to the imported Russian

LEU by processing, handling, or otherwise modifying it in some way before it is received by the ultimate end user.

The terms “low-enriched uranium” and “LEU” mean both low-enriched uranium as defined in Section 3102 of the USEC Privatization Act (42 U.S.C. 2297h); and low-enriched uranium as defined in Section 3112A(a) of that Act (42 U.S.C. 2297h–10a(a)).

The term “Russian Entity” means an entity organized under the laws of or otherwise subject to the jurisdiction of the Government of the Russian Federation.

The phrase “Russian LEU” means:

(1) Unirradiated low-enriched uranium that is produced in the Russian Federation or by a Russian entity; and

(2) Unirradiated low-enriched uranium that is determined to have been exchanged with, swapped for, or otherwise obtained in lieu of unirradiated low-enriched uranium that is produced in the Russian Federation or by a Russian entity in a manner designed to circumvent the restrictions under 42 U.S.C. 2297h-10a(d).

The term “U.S. nuclear energy company” means a company that is organized under the laws of, or otherwise subject to the jurisdiction of, the United States; and is involved in the nuclear energy industry.

## **Signing Authority**

This document of the Department of Energy was signed on May 20, 2024, by Dr. K. Michael Goff, Acting Assistant Secretary for Nuclear Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC on May 20, 2024.

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Dr. K. Michael Goff  
Acting Assistant Secretary for Nuclear Energy