

July 10, 1998

SECY-98-172

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: PROPOSED RULE: "CERTIFICATION RENEWAL AND
AMENDMENT PROCESSES," 10 CFR PART 76

PURPOSE:

To obtain the Commission's approval to publish a notice of proposed rulemaking for public comment.

CATEGORY:

This paper covers a policy question requiring Commission consideration.

BACKGROUND:

In the Staff Requirements Memorandum (SRM) issued April 9, 1998, in response to SECY-98-044, the Commission did not object to implementation of the modified rulemaking plan to incorporate a more comprehensive revision to 10 CFR Part 76. Also, the SRM directed the staff to submit the proposed rule to the Commission for approval before issuance for public comments.

The staff is proposing to amend the regulations that apply to the Paducah and Portsmouth gaseous diffusion plants. These plants came under NRC oversight on March 3, 1997. While

CONTACT: John Telford, NMSS/IMNS
(301) 415-6229

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE AVAILABLE

implementing the initial certification and amendment processes specified in the current regulations, the staff identified several areas in these processes that need to be improved so that they would be more effective and efficient. This proposed rulemaking would: (1) modify the process for certificate renewals; (2) establish a process for a certificate amendment comparable to the process currently used to amend a fuel cycle license; (3) revise the appeal process for amendments; (4) eliminate the significant designation for amendments; (5) simplify the criteria for persons who are eligible to file petitions for review of amendment actions; (6) remove references to the initial applications because the initial certificates have been issued; and (7) lengthen the time periods associated with filing petitions for review.

The Commission should be aware that, currently, the initial decision on a certificate amendment application can be appealed directly to the Commission. Under the proposed rulemaking, this would no longer be true. The responsibility for the initial decision on a certificate amendment application would be delegated to the branch chief. The branch chief's decision could be appealed to the office director, while the director's decision, in turn, could be appealed to the Commission.

Until a final rule is published, the staff would use Notice of Enforcement Discretion to address time-sensitive issues. The staff in SECY-95-214 informed the Commission that the staff intended to exercise enforcement discretion at the gaseous diffusion plants in a manner similar to that used for reactor licensees. The staff is developing a Commission paper to modify Section VII.C of the Enforcement Policy, to include gaseous diffusion plants.

COORDINATION:

The Office of the General Counsel has no legal objection to this proposed rule. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the proposed rule for information technology and information management implications and concurs in it.

RESOURCES:

Resources to complete this rulemaking are included in the current budget. No additional resources are required to implement this rule.

RECOMMENDATION: That the Commission:

1. Approve publication of the notice of proposed rulemaking (Attachment 1).

Note:

- a. The rulemaking will be published in the Federal Register for a 60-day public comment period;

- b. Congressional committees will be informed (Attachment 2); and
- c. A press release will be issued (Attachment 3).

L. Joseph Callan
Executive Director
for Operations

Attachments:

1. Federal Register Notice
2. Congressional Letters
3. Press Release

NUCLEAR REGULATORY COMMISSION

10 CFR Part 76

RIN: 3150-AF85

Certification Renewal and Amendment Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that apply to gaseous diffusion plants. In 1994, these regulations established the process by which the NRC would assume regulatory authority for the Paducah and Portsmouth gaseous diffusion plants. These plants first came under NRC oversight on March 3, 1997. While implementing the initial certification and amendment processes specified in the 1994 regulations, the NRC staff identified several areas in these processes that should be revised and improved so that they are more effective and efficient. This proposed rulemaking would modify the process for certificate renewals, establish a process for certificate amendments comparable to the process currently used to amend a fuel cycle license, revise the appeal process for amendments, eliminate the significant designation for amendments, simplify the criteria for persons who are eligible to file a petition for review of an amendment action, remove references to the initial application because the initial certificates have been issued, and lengthen the time periods associated with filing a petition for review.

DATE: Comments on the proposed rule must be received on or before [insert date 60 days after publication in the Federal Register]. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attn: Rulemakings and Adjudications Staff.

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

You may access the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function.

For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov.

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

FOR FURTHER INFORMATION CONTACT: Mr. John L. Telford, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6229, e-mail JLT@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Paducah and Portsmouth gaseous diffusion plants (GAPs) first came under NRC oversight on March 3, 1997. Since that date, as the NRC implemented the initial certification and numerous certificate amendments under the processes specified in the 1994 regulations, the staff has identified several areas to improve the renewal and amendment processes so that they are more effective and efficient. Also, in the 1994 regulations, the certificate renewal period was 1 year. However, by amendment of the Atomic Energy Act (AEA) of 1954, as amended, and implementing rulemaking, this period was recently modified to allow up to 5 years between certificate renewals. These events have caused the NRC to reexamine the Part 76 certificate renewal and amendment processes. Hence, the objective of this proposed rule is to revise and improve the current regulations so that the staff can effectively and efficiently handle certificate renewals as well as the number of certificate amendments that could reasonably be expected over the recently established period of up to 5 years between certificate renewals. This proposed rulemaking would modify the process for certificate renewals, establish a process for certificate amendments comparable to the process currently used to amend a fuel cycle license, revise the appeal process for amendments, eliminate the significant designation for amendments, simplify the criteria for persons who are eligible to file a petition for review of a certificate amendment action, remove references to the initial application because the initial certificates have been issued, and lengthen the time periods associated with filing a petition for review.

Section-by-Section Analysis

Currently, § 76.37 specifies that the Director of the Office of Nuclear Material Safety and Safeguards (the Director) shall publish a Federal Register notice of receipt of an application for renewal. This proposed rule would replace "shall" with "may, at his or her discretion," and insert "for renewal" after the first occurrence of the word "application" in paragraphs (a), (b), and (c). Replacing "shall" with "may, at his or her discretion," allows the Director to determine if a Federal Register notice is warranted for an application for renewal, on a case-by-case basis. There are two reasons for proposing this action. First, if the application does not address any new safety issues or there have not been any major changes to the facility or its operating procedures that would substantially increase the risk associated with the facility, then the Director may decide that a Federal Register notice is not necessary. This flexibility would allow the agency to focus its resources on safety issues that have significant potential risk. Secondly, there is no requirement in the AEA to notice an application for certificate renewal. Furthermore, similar actions for 10 CFR Parts 30, 40, and 70 facilities are not noticed. Also, adding "for renewal" clarifies that the application is specifically for renewal.

In § 76.39, the phrase "for renewal" would be inserted after each occurrence of the word "application." This clarifies that the application being discussed in § 76.39 is specifically for renewal.

Section 76.45 would be modified in paragraph (a) to remove the responsibility for making the initial decision on an amendment application from the Director. This change allows the decision to grant or deny an amendment application to be delegated to the branch chief level. This would contribute to a more efficient use of agency resources and is comparable to

the process used for facilities regulated by the Commission under 10 CFR Parts 30, 40, and 70.

Section 76.45(b) would be deleted. The first sentence currently requires that the Director determine whether the proposed activities are significant, and if so, follow the procedures specified in §§ 76.37 and 76.39. This sentence would be deleted because the procedures specified in § 76.37 to be followed by the Director would become discretionary, and the procedures specified in § 76.39 are currently discretionary. Accordingly, it would not be logical to compel the Director to follow either of them. This deletion would eliminate the significant designation. This deletion is intended to provide a more flexible and efficient regulatory process. However, the public's opportunity to follow each amendment action remains the same because licensing documents are placed in the Commission's Public Document Room, and the public would have an opportunity to file a petition for review of an amendment as described in proposed § 76.45(d). In addition, the last sentence in § 76.45(b) would be deleted because decisions on certificate amendment applications would be delegated to the branch chief level. This delegation would be comparable to the process currently used for 10 CFR Part 30, 40, and 70 facilities.

The current § 76.45(c) would be redesignated as paragraph (b) because the current paragraph (b) would be deleted.

In proposed § 76.45(c), the first sentence would provide that a certificate amendment would become effective when issued. This would allow the NRC staff to handle issues that need to be addressed quickly to avoid an unnecessary operational upset of a large gaseous diffusion plant, ensure adequate protection of public health and safety from radiological hazards, and/or provide for the common defense and security. The second sentence of §

76.45(c) would provide that the staff may, at its discretion, publish notice of its decision on an amendment application in the Federal Register. The staff would take this action, on a case-by-case basis, whenever warranted. For example, if the application does not address any new safety issues or there have not been any major changes to the facility or its operating procedures that would substantially increase the risk associated with the facility, then the staff may decide that a Federal Register notice is not necessary. This flexibility would allow the NRC to devote its resources to safety issues that have significant potential risk. Also, there is no requirement in the AEA to notice a certificate amendment application. Furthermore, the Commission does not notice similar actions for 10 CFR Parts 30, 40, and 70 facilities.

Currently, a decision on an amendment application may be appealed by filing a request for the Commission's review. Proposed § 76.45(d), concerning the staff's determination on an amendment application, would establish procedures for the United States Enrichment Corporation (Corporation), or any person whose interests may be affected, to file a petition for the Director's review. Under the proposed rule, it is the initial determination on a certificate amendment application that would be delegated to the branch chief; therefore, it is logical for the Director to be the first level of review. This process would contribute to a more efficient use of agency resources because an appeal issue may be resolved by the Director and, thus, not need the Commission's review.

Proposed § 76.45(e), concerning the Director's decision, would establish procedures for either the Corporation, or any person whose interests may be affected and who filed a petition for review or filed a response to a petition for review under § 76.45(d), to file a petition for the Commission's review. This proposed rule would have the initial review of a staff determination

on an amendment application rendered by the Director; therefore, it is logical for the Commission to be the final level of review.

In § 76.62(c) the phrase, "who submitted written comments in response to the Federal Register notice on the application or compliance plan under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39" would be removed. This would eliminate restrictions that limit those entities who may file a petition requesting review of the Director's decision regarding issuance of a certificate and/or approval of a compliance plan. Elimination of these restrictions is consistent with the Commission's practice for 10 CFR Parts 30, 40, and 70 facilities. Further, in the event that a Federal Register notice is not issued for a certificate renewal, the notice of the Director's decision would provide the first published opportunity for a person whose interest may be affected to be aware of the action. Also, the number of days specified in § 76.62(c) would be increased, e.g., 15 days becomes 30 days. This would provide more time for the Corporation or other member of the public whose interests may be affected to file a petition for review on a certificate renewal action, since the time period for a certificate renewal was recently extended from annually to up to 5 years and, therefore, the need to act within 15 days because of the time constraint associated with annual renewals has been removed. Also, the sentence, "Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of the Federal Register notice, the Director's initial decision on the certificate application or compliance plan becomes effective and final," would be revised to read: "If the Commission does not issue a decision or otherwise act within 90 days after the publication of the Federal Register notice, the Director's decision remains in effect." This change would make clear that the Director's decision is effective upon issuance and would eliminate a potential 60-day suspension of the effectiveness of the

Director's decision, if a petition for review is filed. The Director's decision would remain in effect unless it is changed by the Commission. This procedure would also be more consistent with the process for license renewals pursuant to 10 CFR Parts 30, 40, and 70. In addition, to accommodate the increased time for both filing a petition for review and responding to a petition, the time provided for the Commission to act would be increased from 60 to 90 days following publication of the Federal Register notice.

The changes made in § 76.62(c) would also be made in § 76.64(d) for the same reasons.

In the introductory text of § 76.91, reference to § 76.35(d) would be changed to § 76.35(f) to correct a typographical error.

In addition, Part 76 would be modified to remove references to the initial application that are no longer relevant because the initial certificates have been issued. In §§ 76.33 (a)(1), (b), (c), (d), and (e), and 76.35, references to "initial" would be removed. Section 76.9 (c) would be removed as no longer relevant because of the reference to the initial certification application. Phrases in §§ 76.21 (a), 76.36(a), 76.60(e)(2), and 76.91 (n) concerning initial certification would be removed. References in §§ 76.7(e)(1), 76.60(c)(2), 76.60(d)(2), and 76.60(e)(1) to the NMSS Director's initial decision would be removed.

Section 76.33 would also be amended to correct a printing error in the regulatory text. In § 76.33(a)(2) the phrase "the names, addresses, and citizenship of its principal office," would be removed.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

The information collection requirements contained in this part of limited applicability apply to a wholly-owned instrumentality of the United States. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 5301 et seq).

Regulatory Analysis

This proposed rulemaking would modify the process for certificate renewals, establish a process for certificate amendments comparable to the process currently used to amend a fuel cycle license, revise the appeal process for amendments, eliminate the significant designation for amendments, simplify the criteria for persons who are eligible to file a petition for review of an amendment action, remove references to the initial application because the initial certificates have been issued, and lengthen the time periods associated with filing a petition for review.

Although current 10 CFR Part 76 contains a process for certificate amendment and the GDP certificates have been amended several times, these licensing actions have identified that the process described in § 76.45 has several deficiencies that should be corrected and that the

process should be revised and improved so that it is more effective and efficient, as discussed above. The proposal being considered parallels the process currently used for 10 CFR Parts 30, 40, and 70 facilities. It also removes the ambiguity associated with determining who can petition the NRC for review of an amendment application decision.

Also, since the statute has been amended to allow up to a 5-year certificate renewal period instead of an annual certificate renewal requirement, the lengthened certificate period has permitted consideration of improvements to the certificate renewal process. Because the time constraints of an annual certification process have been removed, appropriate changes to the time for appeals and lifting of restrictions on who may appeal a certification decision in the proposed rule would more closely resemble the process for renewal of materials licenses under 10 CFR Parts 30, 40, and 70.

A no-change option would maintain the deficiencies and ambiguities in both processes and would not result in an improved process which is more effective and efficient.

Impacts on the Corporation

An uncomplicated certificate amendment process is expected to provide a more timely regulatory process. If the identified deficiencies and ambiguities in the amendment process are not corrected, there is a potential for expense due to plant operational delays and reduced efficiencies that may be related to amendment requests. However, clarification of who can petition the Director for review of a staff determination on an amendment application and/or extension of the period for requesting a review may result in additional petitions. Similarly, the lifting of restrictions on who can petition for review of a certification renewal decision and the lengthening of the time for such petitions may result in additional petitions. This rulemaking is not expected to have any adverse economic impacts on the Corporation.

Benefit

An uncomplicated process for certificate amendment is expected to result in a more effective and efficient NRC review process that would provide more timely completion of amendment reviews. Clarification of who can petition the Director for review of a certificate amendment determination would remove undesirable ambiguities. Specifically, the proposed rule would remove a restriction on who could petition for review by eliminating the current requirement that a petition for review only be filed by a person who had previously provided comments. The proposed rule would allow anyone whose interests may be affected to file a petition for review. Also, extension of the time periods associated with filing a petition for review would provide more time for the public to participate in the amendment process. The proposed rule also provides the same removal of restrictions on who may petition for review of a certification renewal decision and extension of time for petitions for review of a certification renewal decision. Further, the proposed rule provides the staff discretion in publishing the Federal Register notice of receipt of the application for Certificate renewal. Exercise of this discretion permits the staff to use its resources in the most effective and efficient manner.

Preferred Option

The preferred option is to amend the regulations to eliminate ambiguities, reduce inefficiencies, better define the processes for certificate renewals and amendments, allow immediately effective amendments, and allow more time for public participation, while continuing to ensure adequate protection of public health and safety.

This constitutes the regulatory analysis for the proposed rule.

Regulatory Flexibility Certification

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

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 76

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 76.

PART 76--CERTIFICATION OF GASEOUS DIFFUSION PLANTS

1. The authority citation for Part 76 continues to read as follows:

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

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

2. In § 76.7, paragraph (e)(1) is revised to read as follows:

§ 76.7 Employee protection.

* * * * *

(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.

* * * * *

3. In § 76.9, paragraph (c) is removed.

4. In § 76.21, paragraph (a) is revised to read as follows:

§ 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 pursuant to this part. Except as authorized by the NRC under other provisions of this chapter, no person other than the Corporation or its contractors may acquire, deliver, receive, possess, use, or transfer radioactive material at the gaseous diffusion plants at Piketon, Ohio, and Paducah, Kentucky.

* * * * *

5. Section 76.33 is revised to read as follows:

§ 76.33 Application procedures.

(a) Filing requirements.

(1) An application for a certificate of compliance must be tendered by filing 20 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and appropriate resident inspector, in accordance with § 76.5 of this part.

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

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

(b) Oath or affirmation. An application for 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. An application which contains Restricted Data, National Security Information, Safeguards Information, Unclassified Controlled Nuclear Information, proprietary data, or other withholdable information, must be prepared in such a manner that all such information or data are separated from the information to be made available to the public.

6. In § 76.35, the section heading and introductory paragraph are revised to read as follows:

§ 76.35 Contents of application.

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

* * * * *

7. In § 76.36, paragraph (a) is revised to read as follows:

§ 76.36 Renewals.

- (a) The Corporation shall file periodic applications for renewal, as required by § 76.31.

* * * * *

- 8. Section 76.37 is revised to read as follows:

The Director may, at his or her discretion, publish in the Federal Register:

- (a) A notice of the filing of an application for renewal (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 public inspection in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, and in the local public document room at or near the location of the plant);
 - (b) A notice of opportunity for written public comment on the application for renewal;
- and
- (c) The date of any scheduled public meeting regarding the application for renewal.

- 9. In § 76.39, paragraphs (a), the introductory text of (b), (b)(1), and (b)(4) are revised to read as follows:

- (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.

* * * * *

(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.

* * * * *

10. Section 76.45 is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) *Contents of amendment application.* In addition to the application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information to make findings of compliance or acceptability for the proposed activities as 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 when issued by the NRC staff to the Corporation. 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.

(d) *Request for review of staffs 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 a 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 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 staff's amendment determination by providing a written basis for the action. If the Director does not issue a decision or otherwise act within 60 days after receiving the petition for review, the 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. 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 Branch 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. Any person described in this paragraph may file a written response to a petition requesting the Commission'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 Commission's review. 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 otherwise act within 90 days after receiving the petition for review, the Director's decision, under § 76.45(d), on the amendment application remains in effect.

11. In § 76.60, paragraphs (c)(2), (d)(2), (e)(1), and (e)(2) are revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(c) * * *

(2) The Corporation shall post NRC Form 3 during the term of the certificate and for 30 days following certificate termination.

(d) * * *

(2) The Corporation shall comply with the requirements in this part or as specified in an approved plan for achieving compliance.

(e) * * *

(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.

* * * * *

12. In § 76.62, paragraph (c) is revised to read as follows:

§ 76.62 Issuance of certificate and/or approval of compliance plan.

* * * * *

(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 otherwise act 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.

13. In § 76.64, paragraph (d) is revised to read as follows:

§ 76.64 Denial of certificate or compliance plan.

* * * * *

(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 otherwise act 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.

14. In § 76.91, the introductory text and paragraph (n) are revised to read as follows:

§ 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:

* * * * *

(n) Comment from offsite response organizations. The Corporation shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the emergency plan before submitting it to NRC. The Corporation shall provide any comments received within the 60 days to the NRC with the emergency plan.

* * * * *

Dated at Rockville, Maryland, this ____ day of _____ 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed for the information of the subcommittee is a copy of a proposed amendment to 10 CFR Part 76, to be published in the Federal Register.

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations applying to gaseous diffusion plants. In 1994, these regulations established the process by which NRC would assume regulatory authority over the Paducah and Portsmouth gaseous diffusion plants. These plants first came under NRC oversight on March 3, 1997. While implementing the initial certification and amendment process specified in the 1994 regulations, the staff identified several areas in these processes that needed to be revised and improved so that they would be more effective and efficient. This proposed rulemaking would: (1) modify the process for certificate renewals; (2) establish a process for a certificate amendment comparable to the process currently used to amend a fuel cycle license; (3) revise the appeal process for amendments; (4) eliminate the significant (not significant) designations for amendments; (5) simplify the criteria for persons who are eligible to file petitions for review of amendment actions; (6) remove references to the initial applications because the initial certificates have been issued and (7) lengthen the time periods associated with filing petitions for review.

Enclosed is a copy of the proposed rule, which is being transmitted to the Office of the Federal Register for publication, allowing 60 days for public comment. A Regulatory Flexibility Certification is not needed for this amendment because it would have no adverse economic impact on NRC licensees, certificate holders, or the public. An abbreviated Regulatory Analysis is included within the Federal Register notice.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Ralph Hall

NRC CONSIDERS CHANGES TO REGULATIONS FOR RENEWING OR AMENDING USEC CERTIFICATES

The Nuclear Regulatory Commission is seeking public comment on proposed changes to regulations that govern uranium enrichment plants operated by the U.S. Enrichment Corporation (USEC) at Portsmouth, Ohio, and Paducah, Kentucky.

NRC first issued regulations in 1994 to establish the process by which it would assume regulatory authority for the 43-year-old gaseous diffusion plants, which previously operated under the authority of the Department of Energy and the Atomic Energy Commission. The Energy Policy Act of 1992 directed that USEC operate the plants and required the NRC to certify them periodically to ensure compliance with its safety, safeguards and security requirements. The NRC assumed regulatory jurisdiction over the plants' operations in 1997, after issuing initial certificates of compliance to USEC.

In implementing the certificate renewal and amendment processes, the NRC staff has identified several improvements that should be made. The proposed revisions would:

(1) Give NRC officials discretion as to whether to publish a Federal Register notice when an application for certificate renewal is received. Presently such publication is mandatory. Under the revisions, if, for example, the renewal application does not address any new safety issues, or there have not been any major changes to the facility or its operating procedures that would substantially increase the risk, the NRC might decide that a Federal Register notice is not necessary.

(2) Allow responsibility for granting or denying an amendment application to be delegated to the appropriate NRC branch chief, a lower level of management than currently required. Decisions by a branch chief could be appealed to the Office Director and, if necessary, to the Commission. (Currently, decisions on amendment applications are made by the Office Director and can be appealed to the Commission.)

(3) Make NRC staff decisions on certificate renewal requests effective upon issuance, and give the staff discretion as to whether to publish a Federal Register notice announcing such decisions.

(4) Eliminate restrictions as to who may file a petition seeking review of NRC's approval or denial of a certificate of compliance or a plan for achieving compliance for a gaseous diffusion plant. Also, the proposed changes would extend the time to file a petition from 15 to 30 days after a Federal Register notice is published.

Further details of the proposed changes will be contained in a notice to be published in the Federal Register shortly. Interested persons are invited to submit written comments within 60 days of the notice to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Comments may also be submitted electronically, via the agency's interactive rulemaking web site at <http://www.nrc.gov/NRC.rule.html>.

###

Draft press release -- 5/5/98, 11:30 a.m.