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PDR



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 3, 1997

MEMORANDUM TO: David L. Morrison, Director
Office of Nuclear Regulatory Research

FROM: Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: USER NEED MEMORANDUM FOR 10 CFR 76.45

Carl J. Paperiello

The initial Certificates of Compliance authorizing the continuing operation of the Portsmouth and Paducah Gaseous Diffusion Plants under NRC regulatory oversight have been issued. The United States Enrichment Corporation has requested several amendments to those certificates. In implementing the amendment process described in §76.45, the staff has identified several required rule changes that need to be corrected on an expedited basis.

The rule, as written, does not provide a mechanism for making an amendment immediately effective. Currently, once the staff has completed its review, the actual amendment cannot be issued until after the public has an opportunity to petition the Commission for review of the recommended approval. The earliest the staff can issue the amendment is 15 days after notice of the recommendation for approval appears in the Federal Register. There is also an ambiguity in who can petition for Commission review. While significant amendments are noticed in the Federal Register and include an opportunity for public comment, amendments that are not significant are not noticed in advance and there is no public comment opportunity. Furthermore, §76.62(c) only allows those individuals who provided comments to petition for review. Both of these situations need to be corrected and/or clarified by revising Part 76.

As originally written §76.62(c) envisioned an annual certification process, however, the rule now provides for a five-year certification schedule. I request that Part 76 be modified to correct the deficiencies discussed above and provide a certificate amendment process similar to that in Part 70. The attachment contains preliminary language for your consideration in revising §76.45.

I request that the Office of Nuclear Regulatory Research initiate a rulemaking to revise the process for amending the certificates issued under Part 76. Revising the Part 76 amendment process has a high priority and should be completed on an expedited basis.

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§76.45 Application for amendment of certificate.

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

(b) 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) Notice for public comment. Upon receipt of the Corporation's application for amendment of the certificate, the Director will determine whether the proposed activities are significant. If the Director determines that the activities are not significant, the Director will, after appropriate review, issue a decision pursuant to subparagraph (d). If the Director determines that the activities are significant, the Director shall publish in the Federal Register:

(i) A notice of the filing of the amendment application (specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for the public inspection in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, and in the local public document room at or near the location of the plant);

(ii) A notice of opportunity for written public comment on the amendment application; and

(iii) The date of any scheduled public meeting regarding the amendment application. A public meeting may be held on an amendment application if the Director, in his or her discretion, determines that a meeting is in the public interest with respect to a decision on the amendment application.

(iv) When the Director finds that an emergency situation exists, the Director may issue an amendment to the certificate, involving proposed activities considered to be significant, without prior notice and opportunity for public comment. In such a situation the Director will publish a notice of issuance, providing for public comment after issuance. The Commission expects the Corporation to apply for certificate amendments in timely fashion. It will decline to dispense with notice and comment if it determines that the Corporation has abused the emergency provision by failing to make timely application for amendment and thus itself creating the emergency. Whenever an emergency situation exists, the Corporation must explain why this emergency situation occurred and why it could not avoid this situation, and the Director will assess the reasons for failing to file an amendment application sufficiently in advance of the event.

(d) Issuance of amendment to certificate. 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 an amendment to the 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. The Director shall publish notice of the decision in the Federal Register. Unless otherwise stated in the notice, the amendment and the Director's decision shall be final and effective upon issuance.

(e) Denial of amendment to certificate. The Director may deny an application for an amendment to the certificate of compliance or not approve compliance plan upon a written finding that the amendment 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. The Director shall publish notice of the decision in the Federal Register.

(f) Petition for review. 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 15 days after publication of the Federal Register notice. The Corporation may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. The Commission may adopt, by order, further procedures that, in its judgment, would serve the purpose of review of the Director's decision.

(g) Commission review. 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.