

July 10, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-01-0035 - PROPOSED RULE FOR REVISING 10 CFR PART 71 FOR COMPATIBILITY WITH IAEA TRANSPORTATION SAFETY STANDARDS [TS-R-1], AND FOR MAKING OTHER NRC-INITIATED CHANGES

The Commission has approved publication of the proposed rule in the Federal Register for a 90-day public comment period, subject to the comments provided below and the changes noted in the attachment. The Commission has approved continuation of the enhanced public participation process in this rulemaking effort.

The Commission has approved the staff proposal to publish the proposed and final Part 71 amendments concurrent with the Department of Transportation's (DOT) parallel rulemaking, provided that the DOT schedule does not result in an unacceptable delay in finalizing Part 71. The staff should inform the Commission if such a delay occurs and provide periodic updates on this rulemaking to Commission office points of contact through meeting summaries or TA briefings. The Commission should not find itself in the position of reviewing final rule language, for the first time, which has already received final DOT approval.

Although the Federal Register notice is well organized and formatted to clearly identify all of the issues for the public, it should also contain a section which clearly solicits public comments and focuses the public on those areas where more information is needed for the Commission to make a truly informed decision.

The staff should ensure that the views of the Agreement States are solicited on the proposed rule. The staff should also continue to identify and solicit input from industries that possess, use, or transport materials currently exempt from regulatory control (e.g., unimportant quantities of source material under 10 CFR 40.13) to ensure that the potential impacts from this rulemaking are clearly identified and considered in any future regulatory decisions on Part 71.

In proposing to adopt the radionuclide exemption values in TS-R-1 (Issue 2), the staff would include provisions that would allow 10 times the applicable exemption level for natural materials and ores in certain circumstances. As a result, staff is proposing to provide different exemption levels for materials that pose equivalent risks. Such action may be justified by consideration of the balance of the costs and benefits of including certain materials and businesses not currently covered by DOT hazardous materials transportation regulations (e.g., phosphate mining, waste products from the oil and gas industry). The staff should pursue this issue further as the rulemaking proceeds.

The staff should continue to work with DOT to identify opportunities to persuade IAEA to make its processes more transparent and to include cost-benefit analyses in development of its standards. The Commission also supports the staff's intent to participate in the IAEA's effort to establish a Coordinated Research Project to review current surface contamination models, approaches and standards and, hopefully, promptly propose modifications to the TS-R-1 standards based on risks, costs and practical experience.

Attachment: Changes to the Federal Register Notice in SECY-01-0035

cc: Chairman Meserve
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield
OGC
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Attachment

Changes to the Federal Register Notice in SECY-01-0035

1. On page 26, 2nd full paragraph, revise line 2 to read ‘ ... staff believes **it** should’
2. On page 118, revise lines 2 through 4 to read ‘ ... the NRC ~~also~~ believes **that, for the reasons discussed below, double containment is unnecessary to protect public health and safety** ~~this rationale is not risk-informed nor performance based. The NRC believes that the use of Type B package standards provides a risk-informed approach to the transportation of radioactive material.~~