

October 30, 2001

MEMORANDUM TO: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

FROM William D. Travers */RA by Carl J. Paperiello Acting For/*  
Executive Director for Operations

SUBJECT: STATUS OF THE 10 CFR PART 71 PROPOSED RULE

In a Staff Requirements Memorandum (SRM) on SECY-01-0035, dated July 10, 2001, the Commission directed the staff to publish the Part 71 proposed rule concurrent with the Department of Transportation (DOT) parallel rule, to inform the Commission if unacceptable delay occurs in the DOT schedule, and to provide periodic updates on the Part 71 rulemaking. The purpose of this memorandum is to summarize the status of the Part 71 proposed rule to date, as requested by SRM-SECY-01-0035. Four issues are discussed below: revision of the proposed rule Federal Register Notice (FRN) for publication based on SRM-SECY-01-0035; coordination with the DOT for a publication date; coordination with DOT to resolve newly identified issues; and an estimated publication date for the proposed rule.

We are revising the FRN to comply with the instructions given in SRM-SECY-01-0035. The revisions include adding a new section that specifically requests -- through a series of questions -- cost and benefit data, to help the U.S. Nuclear Regulatory Commission (NRC) quantify the impacts of the proposed changes. Other changes include editorial revisions and clarifications of the discussion on radionuclide exemption values (Issue 2), the Criticality Safety Issue, and the revision of  $A_1$  and  $A_2$  values (Issue 3), to be consistent with the DOT proposed rule.

We continue to coordinate with DOT on the publication of both rules. DOT provided, for NRC staff review, a draft FRN of the DOT proposed rule. The DOT draft rule is consistent with the NRC rule. We met with the DOT staff on September 24, 2001, to discuss the newly identified issues [i.e., the Criticality Safety Index (CSI) issue and the  $A_1$  and  $A_2$  values] and to give our comments on the DOT staff's draft FRN (mostly minor and editorial). The CSI issue and  $A_1$  and  $A_2$  values are discussed more fully below.

1. Criticality Safety Index

During discussions with the DOT staff in August 2001, it became apparent that an element in the change to the CSI (see Part 71 FRN, Issue 5) was not included. This was not previously identified by NRC staff, and was therefore not discussed in the June

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2000 Issues Paper, associated public meetings held in August and September 2000, or SECY-01-0035. The CSI is used to limit the number of packages in a shipment to ensure criticality safety during transportation. The International Atomic Energy Agency (IAEA) increased the CSI limit (TS-R-1, Paragraph 530) from 10, to 50, for nonexclusive shipments. The change to the CSI limit resulted from splitting the CSI from the existing Transport Index. The staff has evaluated the CSI change and decided that this change can be made while maintaining safety and will provide shippers with additional flexibility. Therefore, the staff concluded that the CSI change was acceptable, and conforming revisions have been made, in the FRN, in Issues 5 and 16 (Issue 5: "Introduction of the Criticality Safety Index Requirements," and Issue 16: "Fissile Material Exemptions and General License Provisions). The revised FRN pages which highlight this change are attached.

## 2. $A_1$ and $A_2$ Values

During its review of DOT's draft proposed rule, the staff noted that IAEA omitted several radionuclides, during the revision of Table I ( $A_1$  and  $A_2$  values) in TS-R-1. For example, holmium-163 (Ho-163), which is listed in the current Part 71, Appendix A, was not included in revised IAEA TS-R-1 Table for  $A_1$  and  $A_2$ . The NRC and DOT staffs have agreed to include Ho-163 in the proposed Part 71 and 49 CFR  $A_1$  and  $A_2$  Tables, with a footnote that the values were retained for domestic use only. We are working with DOT to resolve this issue for the other radionuclides. A list of radionuclides that are in Part 71, Appendix A, and not in TS-R-1, is attached.

Based on the NRC comments and resolution of the  $A_1$  and  $A_2$  values issue, DOT will revise its draft rule and circulate the revised draft for internal review, within DOT, in October. Currently, DOT believes that it will not be ready to publish its proposed rule, for comment in the Federal Register, before mid-November. However, in view of the current national situation potentially causing delay of all DOT routine work, there is uncertainty with this date.

Our rule publication date depends on the publication date of the DOT rule and resolution of the radionuclides in the  $A_1$  and  $A_2$  Tables. We will finish making the changes in our package, and prepare it for publication, in coordination with DOT, in mid-November 2001. We have changed the current due date. We will provide the FRN to SECY on December 31, 2001, to allow the staff flexibility to coordinate with DOT and the Office of the Federal Register. The staff will inform the Commission of any significant delays beyond the first quarter of fiscal year 2002.

### Attachments:

1. FRN Text
2. "Radioisotopes contained in  $A_1/A_2$  Tables in Part 71 that are not included in TS-R-1"

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OCA  
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