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July 26, 2002

The Council of
State Governments
MIDWESTERN
OFFICE

Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Attention: Rulemaking and Adjudications Staff
Washington, DC 20555-0001

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Dear Chairman Meserve:

Regional Director
Michael H. McCabe

I am writing on behalf of The Council of State Governments' Midwest Radioactive Materials Transportation Committee to comment on one of the issues addressed in the U.S. Nuclear Regulatory Commission's (NRC) Proposed Rulemaking on the Compatibility of 10 CFR Part 71 with the International Atomic Energy Agency's (IAEA) Transportation Safety Standards (TS-R-1) (April 30, 2002; 67 FR 21390). The specific issue is identified as Issue 17, Double Containment of Plutonium.

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The committee does not support the Commission's proposal to remove §71.63(b), which requires that a packaging containing plutonium in excess of 74 TBq provide a separate inner containment. The NRC proposes removing this requirement to bring its regulations in line with the TS-R-1 standards. Those standards do not include a double-containment requirement for plutonium or any other radionuclide. The Commission also hopes to eliminate an inconsistency between the "imposition of an additional packaging requirement" and the philosophy that "Type B packaging standards, in and of themselves," are sufficient for protecting the public health and safety and the environment.

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We urge the NRC *not* to remove §71.63(b) for the following reasons:

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1. As noted in the proposed rulemaking, the petitioner did not provide a quantitative cost analysis, therefore the contention that "the presence of §71.63(b) engenders excessively high costs" is unsubstantiated.
2. The U.S. Department of Energy (DOE), which is a major shipper of plutonium in excess of 74 TBq, has made commitments to the corridor states for shipments to the Waste Isolation Pilot Plant in New Mexico. One of those commitments is the use of the TRUPACT II shipping containers, which use a double containment system. Although it is possible that DOE could continue to use the TRUPACT II without the double containment, this action would constitute a significant change in the transportation system and would not be



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in keeping with the commitments made to the corridor states and other stakeholders. Given the extensive training and public information activities the states and DOE have conducted, such a change would engender its own costs stemming from the need to prepare new information materials and conduct outreach to the public, elected officials, and emergency responders along the shipping corridors.

3. Although the NRC provides a thorough and enlightening review of the history of §71.63(b), the committee feels strongly that the Commission should consider the reaction of the public to what will undoubtedly be perceived as a scaling back of measures that ensure the safety of shipments. The NRC must recognize that this is a time of heightened public awareness of and concern over shipment safety, due both to the events of September 11 and to the recent decision to allow DOE to proceed with a license application for a repository at Yucca Mountain. By proposing to eliminate the double-containment requirement, the Commission runs the risk of undermining the public's confidence in the regulations that are intended to ensure the safety of radioactive materials shipments.

The proposed rulemaking states that the Commission "is prepared to differ from the TS-R-1 standards, at least for domestic shipments, to the extent the standards cannot be justified from a cost-benefit perspective, especially given the current regulations in Part 71 have provided adequate protection of the public health and safety" (21394). We believe §71.63, as it currently stands, does provide adequate protection. Furthermore, we can see little, if any, justification on economic grounds to modify the existing regulation. We urge the Commission, therefore, to retain the double-containment requirement found in §71.63(b).

The committee appreciates the opportunity to provide input into the NRC's proposed rulemaking. If you have any questions about this letter, please contact Ms. Lisa Sattler, the committee's lead staff person, at 920-803-9976 or at lsattler@csg.org.

Sincerely,



Timothy A. Runyon, Chief
Division of Environmental Monitoring,
Illinois Department of Nuclear Safety, and
Chair, CSG Midwestern Radioactive Materials
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