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PROPOSED RULE **PR 71**

(67 FR 21390)

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Dockets Unit
U.S. Department of Transportation
Room PL 401
400 Seventh St., SW
Washington, DC 20590-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: U.S. Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)
67 FR 83:21328-21388 4/30/2002
Docket No. RSPA-99-6283 (HM-230)
Hazardous Materials Regulations; Compatibility with the Regulations
of the International Atomic Energy Agency

AND=====

Rulemaking and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: U.S. Nuclear Regulatory Commission (NRC) 10 CFR 71
67 FR 21390-21484 4/30/2002
RIN 3150-AG71
Draft NUREG/CR-6711
Compatibility with IAEA Transportation Safety Standards (TS-R-1) and
Other Transportation Safety Amendments: Proposed Rule

To Whom It May Concern:

Please accept the following comments for the record, regarding the matters
noted above.

Public Citizen's Critical Mass Energy and Environment Program is extremely
concerned by various aspects of both proposed rules offered by the DOT and
NRC. The comments contained herein should not be seen as all-

encompassing. Lack of comments on any one particular aspect of the proposals should not be inferred as approval or agreement with that issue.

We respectfully request that the NRC and DOT extend their comment periods 180 additional days beyond the July 29, 2002 deadline. This request is based on the fact that there are many large background documents relating to the proposed rule, the significant delay since NRC held three public meetings on this rule in 2000, and the national security issues that are now more relevant than ever.

What your agency is proposing to do is to weaken radioactive transport regulations at the exact same time that there should be a strengthening and tightening of regulations, in response to the increased threat of "dirty bombs" and the corresponding desire for terrorists to gain access to materials to construct such devices.

We insist that both the DOT and NRC take into account the current situation, complete with terrorist threats, and that they use the most up-to-date data on nuclear shipments before amending any rules that would have such enormous impacts on public health and safety.

The Package Performance Study should be completed and thoroughly analyzed before this rulemaking is carried out, so it can properly inform such a rulemaking. The current design requirements for irradiated fuel containers are inadequate, and should be improved.

We are opposed to any weakening of existing standards, the failure to strengthen deficient standards, and the failure to thoroughly consider all risks associated with the significant increases in nuclear shipments that can be expected in the near future.

We are very much opposed to the undemocratic process by which the United States has developed these new radioactive transportation standards through the United Nations International Atomic Energy Agency (IAEA). By any reasonable measure, and for all intents and purposes, the pertinent documents are not readily available to the general public. The deliberations and negotiations are neither explicitly noticed nor accessible.

The IAEA, charged with promoting nuclear industry technology around the world, created the recommendations without the general public's knowledge or input. In turn, the regulations were then transferred to other UN agencies, namely the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). IAEA and these Organizations have agreements and routines for accepting IAEA's rules into the UN recommendations which member nations must adopt to establish international regulatory "harmony." Whenever and wherever "harmonization" has the impact of reducing international standards to a "lowest common denominator," rather than setting the most stringent and protective standards as the benchmark, we stand opposed.

This instance of "harmonization" is simply the NRC's and DOT's excuse for catering to the desires of the nuclear industry for weaker regulations that can help that industry's bottom line.

To that end, the agencies now proposing new rules have chosen to rely on the International Commission on Radiation Protection (ICRP) for estimating the risks of each of hundreds of radionuclides. This is problematic, in that ICRP does not nearly represent the full range of scientific opinion on the health effects of radiation. While the ICRP's most current risk estimates are utilized in this rulemaking, they do not consider important information on the health impacts of radiation, such as:

1. radiation's synergistic effect when combined with other toxins and contaminants in the environment
2. the "bystander effect," wherein cells that are hit with radiation cause other nearby cells to exhibit effects of the exposure, even though the other cells have not been hit by radiation.

Other scientific organizations are now formed to independently assess various aspects of radiation and health. ICRP's conclusions can and should be questioned and challenged.

The stated motives for changing the transportation regulations, including the adoption of the Radioactivity Exemption Tables, are:

1. facilitate nuclear transportation

2. harmonize domestic regulations with international standards

These reasons are not acceptable in that they risk public health and safety, and they do not justify a reduction in existing standards. Additionally, the fact that these new rules, along with the adoption of the exemption values, will facilitate radioactive "release," "clearance," and "recycling" or the otherwise sanctioned dispersal of nuclear waste into industrial materials, daily commerce, and consumer products makes this proposal all the more objectionable.

Specifically, we oppose:

- 1. Legalizing the exemption of varying amounts of radionuclides from transportation regulatory control (raising the allowable exempt concentrations for the majority of radionuclides and allowing exempt quantities of radioactive materials in transit, which was not permitted before.**
- 2. Allowing certificate holders for Dual Purpose Containers (irradiated fuel casks used for both transport and storage) to make design changes without NRC approval or notification.**
- 3. Removing the U.S. requirement that plutonium be shipped in double-walled (double-shelled) containers.**
- 4. Allowing greater contamination on surfaces of irradiated fuel and high level radioactive waste containers (NRC has stated that it will not adopt this deregulation, and we support NRC in refusing to do so.)**

We insist that DOT remove DOT Issue #1 and NRC to remove NRC Issue #2, the Radioactivity/Radionuclide Exemption Tables, and accompanying change in the definition of "radioactive materials" (part of issue #9) from the proposed rules on nuclear transportation regulations (10 CFR 71 and 49 CFR 171 et al).

In light of the threat of "dirty bombs" it is ridiculous that these agencies are proposing to exempt some of every radionuclide from regulatory control. If the regulations are reduced, various levels of radioactive wastes and materials would be considered no longer radioactive and free to be shipped as if uncontaminated.

The Nuclear Regulatory Commission has conceded that the proposed increases in exempt concentrations of radioactive materials will compromise public health and safety.

Public opinion is quite clear that nuclear power and weapons wastes should remain contained and isolated from the environment and the public for their entire hazardous lifetime.

The new regulations (TS-R-1) are being adopted to relax protections and let more radioactive waste out into commerce unregulated. We ask that DOT and NRC remove the Exemption Tables and the redefinition of "radioactive materials" to help prevent more radioactive waste from being deregulated - treated as if non-radioactive - and deliberately dispersed into commercial items we come into contact with routinely.

We also ask that NRC reject the proposal to allow plutonium to be shipped in single-shelled containers. Double-shelled containers have been required for 30 years. Thousands of plutonium shipments are projected to go to the WIPP dump in New Mexico. The original WIPP shipping containers, TRUPACT-1 were rejected because they only had single containment. Current and proposed WIPP containers have double containment. Reducing the required containment on plutonium shipments increases public exposure risk and the release risk from containers. The Environmental Evaluation Group at WIPP has documented that double containers are significantly safer than single. We oppose any weakening in cask design requirements that do not strengthen the containment and make the public safer.

We ask NRC to reject the provisions that would allow changes to be made to irradiated fuel casks, dual-purpose storage and transport casks, without notifying or getting permission from NRC. Some groups opposed this provision when it was being adopted for storage casks (into Part 72 of the NRC regulations) and we continue to oppose it for the transport aspect of the dual-purpose cask regulations. The public has a right to know if design changes are being made and NRC should evaluate those changes for their benefit to the public, not the industry.

We oppose the adoption of new transport regulations that reduce the protection of the public from the transportation of nuclear wastes.

Respectfully,

David Ritter

Public Citizen's Critical Mass Energy and Environment Program