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**FOIA/PA REQUEST**

Case No.: 2004-0249  
Date Rec'd: 5-18-04  
Specialist: [Signature]  
Related Case: \_\_\_\_\_

May 17, 2004

Freedom of Information Coordinator  
Research and Special Programs Administration  
DCR-1  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

NRC Freedom of Information Act and Privacy Act (FOIA/PA) Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T6-D8  
Washington, DC 20555-0001  
Fax: (301) 415-5130

**To Whom It May Concern:**

On behalf of Nuclear Information and Resource Service, Committee to Bridge the Gap, Public Citizen, Inc., and Redwood Alliance ("Requestors"), I write to request access to and copies of the public records described below. This request is made pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq.

This request is eligible for a waiver of any applicable fees because the disclosure of the requested information is in the public interest, likely to contribute significantly to public understanding of the agency's operations and activities, and is not in the commercial interest of the requestors. Please see the enclosed Statement of Justification for Waiver of Fees. Please advise me immediately if your agency is unwilling to waive fees.

This request is eligible for expedited processing because the material requested is essential to Requestors' administrative and judicial challenges to your agency's promulgation of rules for the transport of nuclear materials, which rules endanger public health and safety. (See the enclosed Statement of Justification for Waiver of Fees.) Furthermore, Requestors are public interest organizations engaged in disseminating information about nuclear safety issues and there is an urgent need to inform the public about Federal Government activity in connection with these rules and regulations.

### Requested Records

1. Reference is made to a staff estimate of the average annual dose per radionuclide by the Nuclear Regulatory Commission included in its Proposed Rule, Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments; RIN 3150-AG71, 67 F.R. 21397, April 30, 2002, which states:

"A consequence of using the BSS exemption values for transportation is that the estimated average annual dose under the transportation scenarios exceeds the 10 Sv (1 mrem) per year criterion for some radionuclides. *The staff has estimated* that the average annual dose per radionuclide under the transportation scenarios using the BSS exemption values for a representative list of 20 radionuclides is 0.25 mSv (25 mrem) per year. However, *the staff estimates* that the corresponding dose for the current 70 Bq/g (0.002 Ci/g) exemption value, using the same transportation scenarios and radionuclides, is approximately 0.5 mSv (50 mrem) per year. Although both the current exemption value and the BSS exemption values result in an estimated average dose per radionuclide that exceeds the criterion, the dose estimated for the BSS exemption values is significantly less than that estimated for the current 70 Bq/g (0.002 Ci/g) exemption value." (*Id.*, emphasis added.)

This estimate or rough calculation is also referenced by United States Department of Transportation Research and Special Programs Administration ("DOT-RSPA"), in DOT-RSPA's Proposed Rule RIN 2137-AD40, 49 CFR Parts 171, 172, et al., entitled "Hazardous Materials Regulations; Compatibility with the Regulations of the International Atomic Energy Agency," April 30, 2004, 67 F.R. 21331.

Please provide any and all memoranda, correspondence, work papers, calculations, spreadsheets, e-mail, or other documents created or obtained by your agency in connection with the preparation or evaluation of this estimate.

2. Reference is made to NUREG/CR-6711, *Environmental Assessment of Major Revision of 10 CFR Part 71*, Final Rule, Manuscript Completed: December 2003, Date Published: ----- 2004, Prepared by D. Hammer, K. Blake, ICF Consulting, Inc. for Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, NRC Job Code J5236. This document states:

"ICF reviewed information contained in DOE's Shipment Mobility/Accountability Collection (SMAC) database in an attempt to identify technical information on exempted shipments of fissile materials and fissile material shipments of exempted quantities, or those made under a general license. In addition, extensive searches were conducted via the Internet. Each search was targeted at obtaining specific information related to a proposed change." (*Id.* at pp. 44-45.)

Please provide any and all memoranda, correspondence, work papers, calculations, spreadsheets, e-mail, or other documents created or obtained by your agency in connection with the referenced review of the DOE's Shipment Mobility/Accountability Collection (SMAC) database and searches of the Internet.

Sincerely,

M. R. Wolfe & Associates

A handwritten signature in black ink, appearing to read 'John H. Farrow', with a long horizontal stroke extending to the right.

John H. Farrow

Enclosure: **Statement of Justification for Waiver of Fees**

## Statement of Justification for Waiver of Fees

This statement is furnished in connection with the request by Nuclear Information and Resource Service, Committee to Bridge the Gap, Public Citizen, Inc., and Redwood Alliance ("Requestors") for certain records described in a letter submitted on their behalf by John H. Farrow on May 17, 2004.

1. Requestors intend to use the requested information in connection with an administrative appeal of a rulemaking by the United States Department of Transportation Research and Special Programs Administration ("DOT-RSPA"), adopting rules and regulations as reflected in DOT-RSPA's Final Rule RIN 2137-AD40, 49 CFR Parts 171, 172, et al., entitled "Hazardous Materials Regulations; Compatibility with the Regulations of the International Atomic Energy Agency," as published in 69 F.R. 3632 et seq., January 26, 2004. This appeal was filed by Nuclear Information and Resource Service on February 25, 2004.

Requestors also intend to use the information in connection with their pending Petition for Review of a final order of the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") entered January 26, 2004, adopting rules and regulations, as reflected in the Commission's Final Rule, RIN 3150 - AG71, 10 C.F.R. Part 71, entitled "Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments," as published in 69 Federal Register 3698 et seq., January 26, 2004. This Petition for Review is currently pending before the United States Court of Appeals for the Ninth Circuit, Case No. 04-71432.

2. Requestors intend to evaluate the requested material to determine whether and to what extent it supports agency action in these rulemakings.

3. Requestors intend to use the material in connection with the administrative appeal and Petition for Review ("challenges") noted above, which challenges will contribute to public understanding of the scientific basis, or lack thereof, of agency action in promulgating rules governing the transport of nuclear materials. Requestors will make the requested material available to recognized experts in nuclear safety who will evaluate whether it supported these rulemakings. Requestors are public interest organizations with a mission that includes advocating nuclear safety and informing the public about nuclear safety issues.

4. Requestors will make their assessment of the requested materials available to the public through the public record of the challenges noted above. Requestors will also disseminate information about these challenges and their basis to their membership and to the public generally through press releases and other communications.

5. The public segment whose understanding will be increased by the disclosure of the requested materials includes the combined memberships of Requestors' organizations

and those members of the general public interested in issues of nuclear safety that are reached by Requestors' dissemination of information about the challenges and issues.

6. Dissemination of information will be through the public record of administrative and judicial challenges, press releases, communications to memberships, and other public education efforts.

7. Requestors will provide public access to the requested materials to the public in return for an access fee.

8. Requestors have no commercial or private interest in the requested material.