

May 8, 2007

Docket Management System
Attn: Thomas J. Barrett, Administrator
U.S. Department of Transportation
400 Seventh Street SW
Nassif Building, PL-401
Washington, DC 20590-0001

Dear Mr. Barrett:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to provide our comments on the U.S. Department of Transportation's (DOT) notice of proposed rulemaking (NPRM) on Hazardous Material: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments (71 FR 76834, December 21, 2006).

Because the NRC, DOT, and the U.S. Department of Homeland Security (DHS) each have roles in ensuring the safe and secure transport of radioactive material, our agencies must have consistent security requirements for risk-significant radioactive materials. At the G-8 Summit meetings in 2004 and 2005, President Bush set forth the U.S. Government's commitment to work towards following the guidance in the International Atomic Energy Agency (IAEA), "Code of Conduct on the Safety and Security of Radioactive Sources" (Code of Conduct). The NRC strongly supports enhancing the security requirements for the transportation of radioactive material through harmonization with the IAEA's Code of Conduct.

On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (Public Law 109-58) (EPAct). Section 651(d) of the EPAct established the Radiation Source Protection and Security Task Force. The task force is chaired by the NRC with membership from multiple Federal agencies, including DOT; several state agencies also participate in task force activities. The EPAct charged the Task Force with: (1) evaluating and providing recommendations relating to the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiological source in a radiological dispersal device; and (2) providing recommendations for appropriate regulatory and legislative changes to the Congress and the President. The Task Force provided its first report to President Bush and the Congress in August 2006 and, in Action 3-2, indicated that "[t]he DOT should examine the use of the [IAEA] Code of Conduct Category 1 and 2 thresholds in domestic transportation regulations." Many of our comments are related to this issue in that the proposed rulemaking does not consistently correlate with Action 3-2.

In 49 CFR 172.800(b)(7), DOT uses placard-based threshold limits to establish security requirements for Class 7 materials. NRC does not support the continued use of placard-based threshold limits for security requirements of Class 7 material because the threshold limits are not based upon quantity limits such as those in the Code of Conduct; further, some of these shipments do not pose a significant security risk.

DOT's regulations require placarding of the transport vehicle or bulk container for Class 7 shipments containing Low Specific Activity (LSA), Surface Contaminated Objects (SCO), and Yellow III labeled packages. Both LSA and SCO shipments typically have low average quantities of radioactivity per unit volume that do not warrant additional security measures. Shipments in Yellow III placarded vehicles may or may not contain a quantity of radioactive material exceeding the Code of Conduct Category 1 and 2 quantity limits. The use of the Yellow III label is based upon the package surface and the 1 meter distant radiation dose rates of the transportation package, not the quantity of radioactive material contained in the transportation package.

Therefore, the NRC recommends revision of DOT regulations in 49 CFR 172.800 (b)(1) and (7) and, in § 172.820(a)(3) of this proposed rule to reflect the use of the Code of Conduct Category 1 and 2 quantity limits for Class 7 (radioactive) material as threshold limits for establishing security requirements. This includes both physical security, personnel security (i.e., background check), commodity data collection, route analysis, route selection, notification, and pre-trip security inspection requirements. For radionuclides that are not included within the IAEA's Code of Conduct, but are contained within DOT's current regulations in 49 CFR 173.435, NRC supports DOT's current security threshold limit which uses the highway route controlled quantity limit, as defined in 49 CFR 173.403. Finally, NRC also supports future DOT harmonization with changes to transportation security standards currently being developed by the IAEA with respect to quantity limits and would urge careful consideration of any other aspects of transportation security standards developed by the IAEA.

The proposed rail transportation route safety and security risk analysis would require rail carriers to include known threat scenarios provided by the Transportation Security Administration (TSA) and Federal Railroad Administration (FRA). Under the Atomic Energy Act of 1954, as amended, both the NRC and the Department of Energy (DOE) are two federal government agencies responsible for protecting nuclear material and facilities against threats. For over 30 years, the NRC and DOE have coordinated the development and implementation of their threat assessments and physical protection policies to ensure similar protection for comparable nuclear material and risks. To ensure consistency in security policy goals and objectives and to ensure that the regulated industry is not confronted with inconsistent security guidance or requirements promulgated by multiple agencies that share responsibility for radioactive material security, the FRA and TSA also need to consult and coordinate with NRC and DOE on the threat scenarios for radioactive material that will be provided to carriers for use in the development of their route assessments.

NRC appreciates this opportunity to provide DOT with insights on security requirements for the transportation of radioactive material. The comments on this NPRM are intended to improve the security of risk-significant radioactive material during its transportation and thereby reduce the risk to the public from potential malevolent uses, and they are intended to provide for greater consistency and effectiveness in implementing security measures for transportation of risk-significant radioactive materials. As noted earlier, the NRC, DOT, and DHS each have a role in ensuring the safe and secure transport of radioactive material. Our agencies must have consistent security requirements for the transportation of risk-significant radioactive materials. NRC staff has worked closely in the past with DOT in revising radioactive material transportation requirements and remains available to work with DOT staff in the development of this rule.

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Please contact Mr. Mark Shaffer, the Deputy Director for Material Security in the NRC's Office of Nuclear Security and Incident Response, Division of Security Policy, if you have questions on our suggestions or require further support from the NRC staff on this rulemaking. Mr. Shaffer can be reached at 301-415-0611 or by e-mail at MRS@nrc.gov.

Sincerely,

/RA Martin J. Virgilio Acting for/

Luis A. Reyes
Executive Director
for Operations

RIN Number: 2137-AE02
Docket Number: RSPA-04-18730 (HM-232E)

cc: Kip Hawley, Administrator, DHS/TSA

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cc: Kip Hawley, Administrator, DHS/TSA

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