

**RULEMAKING ISSUE
(NEGATIVE CONSENT)**

SECY-00-0117

May 30, 2000

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: RULEMAKING PROCESS FOR REVISING 10 CFR PART 71 FOR COMPATIBILITY WITH IAEA TRANSPORTATION SAFETY STANDARDS [ST-1], AND TO MAKE OTHER CHANGES

- **PURPOSE:**
- **BACKGROUND:**
- **DISCUSSION:**
- **COORDINATION:**
- **RECOMMENDATION:**

PURPOSE:

To request, by negative consent, Commission approval of: (1) the staff's plan to use an enhanced-public-participation process (web-site and public meetings) in the [10 CFR Part 71](#) rulemaking; and (2) the staff's intent to publish, for public comment, an issues paper in the Federal Register (FR) that discusses NRC's plan to revise 10 CFR Part 71 and provides a summary of the changes being considered. The issues paper will form the basis for discussions at the public meetings.

BACKGROUND:

The Commission directed the staff, in a Staff Requirements Memorandum (SRM) dated September 17, 1999, to prepare an overall rulemaking plan that addresses the need to make the regulations in 10 CFR Part 71 "Packaging and Transportation of Radioactive Material" compatible with ST-1, the latest revision of the International Atomic Energy Agency (IAEA) transportation safety standards [Staff Requirements-SECY-99-200-Federal Register Notice Responding to Public Comments Received on an Emergency Final Rule for Fissile Material Shipments ([Attachment 1](#))]. The IAEA has been revising its transportation standards on approximately a 10-year cycle, with the last edition, ST-1, published in December 1996. The Commission also directed the staff to address, as part of the overall rulemaking plan, the unintended economic impact of its emergency final rule entitled, "Fissile Material Shipments and Exemptions", published on February 10, 1997 (62 FR 5907).

In a Staff Requirements Memorandum dated December 13, 1999 (M991109A), [Attachment 2](#), the Commission directed the NRC staff, after the Commission's meeting on nuclear materials and waste activities with invited stakeholders, to improve stakeholder public participation in Nuclear Regulatory Commission (NRC) activities, including rulemaking. Based on the Commission's discussions with the stakeholders, seven areas were identified for improvement, including holding regional facilitated meetings with the stakeholders, holding participatory workshops, and making information and NRC draft documents available on the Web.

The U.S. Department of Transportation ([DOT](#) [EXIT](#)) is the lead Agency for regulation of transportation of hazardous material in the United States, and is a co-regulator with the NRC of transportation of radioactive material. DOT is also the U.S. competent authority for interaction with the IAEA. Therefore, this revision to Part 71 is being coordinated with the DOT, to ensure that consistent regulatory standards are maintained between the NRC's Part 71 and the DOT's Hazardous Materials Regulations (in particular, 49 CFR Parts 171-178), and to ensure that both rules are published on the same schedule. The DOT published an Advance Notice of Proposed Rulemaking containing the ST-1 changes on December 28, 1999 (64 FR 72633) for public comment.

DISCUSSION:

To expedite the rulemaking, the NRC staff formed a working group that includes technical staff from NMSS, OGC and a representative from the DOT. In addition, a steering group consisting of NRC management from NMSS and OGC provides continuous and direct management consultation for the working group to expedite preparation of, and concurrence in, rulemaking packages.

The staff plans to supplement the standard rulemaking process for the revision of 10 CFR Part 71 by including an enhanced participatory process similar to that used in the revision to Part 35 and the considerations on the control of solid materials. This will include facilitated public meetings before drafting any proposed language to solicit early public input on the major issues of the rulemaking. To support these enhanced activities, the staff has prepared an issues paper to be used as a starting point for discussions at the public meetings. The attached Federal Register notice (FRN) contains the issues paper and announcement of public meetings ([Attachment 3](#) ). The issues paper summarizes 17 issues associated with the Part 71 rulemaking -- the staff identified eleven Part 71 IAEA-compatibility issues to be addressed through the rulemaking. Six

additional issues were identified by the staff and the Commission for incorporation in the rulemaking. The issues paper contains a brief overview of each issue, with specific factors for consideration and discussion. The staff is planning to put the FRN on a dedicated portion of the NRC's rulemaking website, similar to that established for the control of solid materials issue, to solicit public comments on the issues and to facilitate electronic interactions with stakeholders and other members of the public.

The FRN will also announce four facilitated public meetings, specifically held to discuss the issues paper, and to solicit public and industry comments on this Part 71 revision. The first three outreach meetings, to be held in Chicago, San Francisco, and Atlanta, will be run in a Town Hall style to collect verbal and written comments from all participants. The three meetings are planned for 6-10 PM to maximize public participation. The fourth meeting will be in the Washington DC area, on August 10, 2000, and will be run as a workshop/roundtable discussion of all Part 71 issues.

The staff is interested in stakeholder and industry comments on cross-cutting factors that are common to most of the issues in addition to specific factors for each issue. These cross-cutting factors include: 1) how should risk considerations (i.e., what can happen, how likely is it, what are the consequences) be factored into rulemaking on applicable issues; 2) costs (i.e., administrative, training, testing) to industry and/or Government agencies in adopting ST-1 requirements or the NRC-initiated changes; and 3) potential problems that may occur as a result of adopting ST-1 requirements, or problems that may occur from partial or non-adoption of the ST-1 requirements resulting in dual standards between domestic (10 CFR Part 71) and international (ST-1) requirements.

In addition, the staff is requesting comments on: 1) operational data on exposures that might result (or be reduced) from implementing the Part 71 changes; 2) whether the presented factors are appropriate; and 3) whether other factors should be considered, including providing quantitative information for these factors. The staff hopes that stakeholders' comments will help to quantify the potential impact of these changes and will assist the NRC, as the proposed rule is developed, in developing a risk-informed alternative as its preferred option. Early input from the Agreement States will be solicited to address issues of compatibility.

After the period of early public input, the staff intends to give the Commission feedback on the public meetings before developing the proposed rule. The staff will consider stakeholder input in evaluating options for the proposed rule. The schedule for the enhanced-public-participation process and the proposed rule development is enclosed as [Attachment 4](#). This procedure will depart somewhat from the process outlined in Management Directive 6.3, "The Rulemaking Process." The rationale for this approach includes: 1) the September 17, 1999 SRM on SECY-99-200 and the SRMs dated March 3 and 9, 2000 concerning the status of spent fuel projects and the NMSS program review, respectively, which provided direction to the staff on the revision of 10 CFR Part 71 to make it compatible with the IAEA transportation standards; 2) the December 13, 1999, SRM M991109A, provided clear direction on stakeholder participation, and 3) the enhanced process, including the issues paper and public meetings, will have provided early input to the rulemaking process by stakeholders.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed the Commission Paper for resource impacts and has no objections. The Office of the Chief Information Officer has reviewed the Commission Paper for information technology and information management implications and concurs in it. However, this paper suggests resulting rulemakings that could impose information requirements that must be submitted to the Office of Management and Budget at the same time the rule is forwarded to the Federal Register for publication.

RECOMMENDATION:

That the Commission:

1. Approve publication of the attached FRN containing the issues paper, for public comment.
2. Note that staff requests approval in 10 days. Action will not be taken until the SRM is received. We consider this action within the delegated authority of the EDO.

/RA by Carl J. Paperiello Acting For/

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Attachments: 1. [SRM-SECY-99-200](#)
2. [SRM-M991109A](#)
3. [FRN Containing Requests for Comments on Part 71 Issues Paper](#) 
4. [Schedule for enhanced-public-participation](#)

Schedule for Part 71 Rule Enhanced-public-participation Process

Milestone	Completion Date
Town Hall Stakeholders Meeting, Chicago, Illinois	July 11, 2000
Town Hall Stakeholders Meeting, San Francisco, California	July 13, 2000
Town Hall Stakeholders Meeting, Atlanta, Georgia	July 18, 2000
Workshop/Roundtable Stakeholders Meeting, Washington, DC	August 10, 2000
Information Paper to the Commission summarizing the comment	October 2000
Proposed Rule Package to Commission	March, 2001