

IN RESPONSE, PLEASE
REFER TO: M031120A

November 20, 2003

MEMORANDUM FOR: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 11:30 A.M.,
THURSDAY, NOVEMBER 20, 2003, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-03-0141 - Final Rule to Revise 10 CFR Part 71 to Be Compatible with IAEA
Transportation Safety Standards [TS-R-1] and Make Other NRC-Initiated Changes

The Commission approved a final rule which amends 10 CFR Part 71 to conform NRC's transportation regulations with the IAEA Transportation Safety Standards and ensures consistency with the Department of Transportation's Hazardous Materials Regulations. The Commission approved the publication and implementation of this final rule subject to the comments and changes noted in the attachment.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

12/22/03)

The staff should continue to keep the Commission informed of future changes to the IAEA's Transportation Safety Standards, while they are still under discussion, in order to provide the Commission an early opportunity to provide input to the staff on these changes.

The staff should pursue an additional rulemaking with DOT to remove the apparent double standard related to shipments of natural ores or NORM and allow a similar exemption for material with equivalent risk. This rulemaking allows transportation exemptions of up to ten times the exempt values in the rule for shipments of ore or NORM intended for mineral production or disposal. However, it would not exempt shipments of ore or NORM intended for isotope processing that is part of the nuclear fuel cycle. In order to be consistent with our overall risk-informed approach to regulations, staff should advocate change proposals in future revisions of the IAEA transportation regulations that would apply the 10 times exemption to all NORM materials consistently regardless of their intended use.

The staff should come to the Commission one month after the date of the SRM on this SECY paper with a plan for resolution of the new concerns recently identified by the staff related to the change authority for dual use canisters and propose a final regulatory solution pathway to the Commission. This pathway should not include initiation of new rulemaking on this issue. Since

this issue has already been discussed in a proposed rule and comments collected, the staff can move forward with resolving the comments and issuing a final rule in a short time frame.

The staff should continue to work with industries that are not regulated by the NRC (such as the zircon sand and other mineral extraction industries) to limit the impact on them during the implementation of this rule.

Attachment:
As stated

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
OGC
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Changes to the Final Rule in SECY-03-0141

Prior to publication, the Federal Register notice (FRN) should be revised to incorporate the following changes:

1. The responses under “Adequacy of NRC Regulations and Rulemaking Process” should be revised to more carefully distinguish between the meaning and significance of “**biological** effects” and “**health** effects.”
2. The FRN should not include statements that are not evidence-based, i.e., can not be supported by data, peer reviewed journals, etc., e.g., on page 26 the statement “Recently, concern has been expressed that long-term exposure to low levels of radiation may be more dangerous than short-term exposures to high levels” should be deleted based on the following statement that ““However, there is no epidemiology data, published in peer reviewed journals, to support this concern.”
3. References for significant scientific conclusions that have appeared in peer-reviewed scientific journals should be provided, e.g., the statement “No birth defects or genetic disorders among the children born to atomic bomb survivors from Hiroshima and Nagasaki have been observed at low doses of radiation (<25 rad)” on page 26.
4. The FRN should be carefully screened for phrases and terms that have no clear meaning, e.g., what is meant by “**mildly** radioactive materials” on page 24 and “any **undue** increase in exposure” on page 28.
5. The FRN should be carefully reviewed to ensure that it contains the most up-to-date information, e.g., on page 37 the response to a comment on which countries have already adopted the proposed IAEA guidelines is based on a September 2002 survey.
6. The FRN should be reviewed to make sure that it does not leave the reader searching for information, e.g., on page 89 it states that “while some revised A_1 and A_2 values are higher and some are lower, the potential dose following an accident is the same as with the previous A_1 and A_2 values” but the reader is not provided with the dose upon which the values are based.
7. Prior to the effective date of the regulation, staff should approach DOT to determine whether the 1967 designs are adequate for domestic shipping from a public health and safety perspective. If the conclusions of this meeting are that the 1967 designs should still be phased out, staff should actively engage with industry to ensure there are adequate staff resources available to review new transportation package certifications so that transportation of radioactive sources will not be significantly impacted at the end of the transition period. In particular, the staff should monitor the impact of this rulemaking on small businesses during the transition period. The staff should keep the Commission informed of any significant adverse impacts identified during this transition period.
8. The staff should work with OGC on the specific wording of the Federal Register Notice related to allowing holders of transportation certificates for dual use canisters (i.e., canisters which can be used for transportation and storage) to make limited changes without NRC approval. It should indicate that staff will work with appropriate stake

holders to resolve new concerns recently identified by the staff and propose a final regulatory solution to the Commission.

9. The FRN and associated documents should be revised to more clearly communicate what the term “double containment” means in the context of this regulation.
10. On page 13, next to last paragraph, revise the last line to read ‘ ... ~~support safe shipments~~ **are robust and protective of the public during transportation of spent fuel. Therefore even with an increase in the number of shipments, these shipments can be made safely** in large numbers to a’
11. On page 16, last paragraph, revise line 4 to read ‘ ... Study (PPS), and **full-scale** ~~real~~ cask tests’
12. On page 17 next to last paragraph, revise lines 4 and 5 to read ‘ ... Therefore, no **changes were made to this rulemaking** ~~NRC action is necessary~~. The NRC’
13. On page 21, the response does not address the comment and should be revised.
14. On page 25, the response should add a statement explaining the recently issued DOT regulations concerning security plans and driver identification cards.
15. On page 27, last paragraph, the last sentence is unclear and should be revised.
16. On page 28, the 1st paragraph is unclear and needs to be revised.