



August 7, 2009

Docket Operations
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Docket Number PHMSA-2009-0139 (Notice No. 09-3)

To Whom It May Concern:

On behalf of the members of The Council of State Governments' Midwestern Radioactive Materials Transportation Committee, we are writing to submit comments on the "Notice and Request for Comments on Issues or Problems Concerning International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Materials," which the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) published in the *Federal Register* on June 2, 2009 (Docket Number PHMSA-2009-0139). Previously, Lisa Janairo of the committee staff wrote to request a 60-day extension of the comment period for the notice. PHMSA declined to extend the deadline but did inform Ms. Janairo that comments would be considered after the June 15 deadline.

In general, the committee supports the comments submitted by the Illinois Emergency Management Agency (dated June 11, 2009). Like Illinois, the Midwestern region as a whole stands to be heavily impacted by shipments of spent nuclear fuel traveling to national or regional facilities for storage and ultimately for disposal. We oppose the adoption of Section 507(b), which establishes radionuclide-specific surface contamination limits in the IAEA TS-R-1 regulations. We also oppose the adoption of such a measure in U.S. federal regulations. We take this position for two reasons:

1. The proposed change would result in a reduction in protection for the public. The proposal to increase the surface-contamination limits for some radionuclides means that shippers will not have to decontaminate shipping casks as well as they currently do. This could be perceived as a reduction in protection for the public and may result in an erosion of public confidence in large-scale shipping programs to move spent nuclear

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fuel. Do PHMSA and the NRC have any documentation to show that increasing allowable surface contamination limits will *not* have an impact on public health and safety? If so, this information should be made public as part of the docket.

2. Radionuclide-specific surface contamination limits would be unenforceable. It is the states' responsibility to conduct point-of-origin inspections and, when necessary, en-route inspections of spent nuclear fuel shipments to assure regulatory compliance. Under the proposed change, the states will lose their ability to evaluate surface contamination levels on shipments due to the lack of available technology capable of measuring individual radionuclides at or below the regulatory limits in the field. If the technology is developed, it will likely be cost prohibitive, as will the training and the ongoing maintenance and calibration of this type of equipment. Complicating the states' role as regulators will further reduce protection for the public.

In the *Federal Register* notice and accompanying documents, PHMSA and the NRC do not adequately explain the rationale for the proposed changes. Who stands to benefit from the proposed change? Has anyone conducted a cost-benefit analysis to determine the impacts on shippers, receivers, regulators, and the public? Any consideration of whether to adopt the proposed change can only take place if affected parties understand who stands to gain, who stands to lose, and how.

As a final observation, the states are partners with PHMSA and the NRC in regulating and overseeing shipments of spent nuclear fuel and, as such, we have a significant stake in developments that will affect our ability to protect the health and safety of the public. Traditionally, through the Midwestern Radioactive Materials Transportation Committee and other forums, we have enjoyed a cooperative relationship with PHMSA and the NRC on issues of concern related to transportation. Timely consultation with the states on any proposed changes to the IAEA regulations would be a significant improvement to the process by increasing transparency and identifying early on any state concerns about implementation. We would welcome the opportunity to work with staff from PHMSA and the NRC to identify enhancements to the existing process.

We understand that the Western Interstate Energy Board and the State of Nevada's Agency for Nuclear Projects have requested one or more telebriefings with the state regional groups on transportation. We support that request and are interested in participating in any telebriefings that PHMSA and the NRC conduct. We also welcome the opportunity to meet with representatives of PHMSA and the NRC at future meetings of the Midwestern Radioactive Materials Transportation Committee, not only to stay abreast of the ongoing review process for the TS-R-1 regulations, but also to receive advance notice about other initiatives and upcoming changes that may have an impact on our work as regulators.

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Thank you for the opportunity to comment on this important issue. We look forward to continuing to work with PHMSA and the NRC in the future to protect the health and safety of the public.

Sincerely,



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