

October 28, 2009

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Charles L. Miller, Director **/RA George Pangburn for/**
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: PARTIAL DENIAL OF STATE OF NEVADA PETITION; AND
CONSIDERATION OF THE REMAINDER OF THE PETITION IN
THE RULEMAKING PROCESS (PRM-73-10)

Enclosed for your signature (Enclosure 1) is a Federal Register Notice (FRN) containing the U.S. Nuclear Regulatory Commission (NRC) decision on the State of Nevada petition which was submitted on June 22, 1999, and docketed as PRM-73-10. Also enclosed for your signature is a letter to the petitioner (Enclosure 2).

The State of Nevada requested in PRM-73-10 that the NRC initiate rulemaking to strengthen its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The State of Nevada also requested that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure during nuclear waste shipments, attacks involving the capture of nuclear waste shipments, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons.

The staff recommends that NRC deny portions of PRM-73-10 and consider the remainder of the petition in the NRC ongoing rulemaking process. The denied portions involve the petitioner's request for clarification of the definition of hand-carried equipment in 10 CFR 73.1(a)(1)(D), and the petitioner's request for amendment of the design basis threat in 10 CFR 73.1 (a)(1).

The staff also recommends that NRC deny the portion of PRM-73-10 that requested NRC complete a comprehensive security assessment. This request, as submitted under 10 CFR 2.208 as a petition for rulemaking, would not be granted because it is a request for a study by the NRC and not a request to amend the NRC regulations. The State of Nevada is aware that the NRC conducted security assessments, however the results of these assessments have not been conveyed to the State of Nevada.

Six petitioner's requests are being considered in the rulemaking process. These are: (1) clarification of the definition of radiological sabotage, (2) shipment route selection, (3) armed escorts for road shipments, (4) armed escorts for rail shipments, (5) planning and scheduling requirements for strategic special nuclear material in 10 CFR 73.26 be applied to shipments of spent nuclear fuel, and (6) rail shipments in dedicated trains.

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(301) 415-6103

Notices: A notice to the Commission that the Executive Director for Operations has signed the enclosed FRN (Enclosure 3). The appropriate Congressional committees will be notified.

Coordination: The Offices of Nuclear Security and Incident Response, Nuclear Material Safety and Safeguards, and Administration concur with these amendments. The Office of the General Counsel has no legal objection.

Enclosures:

1. FRN of Final Rule
2. Letter to the Petitioner
3. Notice of Petition Closure Signed by the EDO

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