

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

P. O. Box 942898

Sacramento, California 94298-0001

(916) 843-3330

(800) 735-2929 (TT/TDD)

(800) 735-2922 (Voice)

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFSecretary, U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudication Staff
Washington, DC 20555-0001

Subject: Comments on Docket ID: NRC-2009-0163

Introduction.

The California Highway Patrol (CHP) respectfully submits the following comments in response to the Nuclear Regulatory Commission's (NRC) proposal to amend security regulations pertaining to the transportation of irradiated reactor fuel (for the purpose of the rulemaking and these comments, the terms "irradiated reactor fuel," and "spent nuclear fuel" (SNF) are used interchangeably), under Docket NRC-2009-0163.

Background.

The current rule of Title 10, Code of Federal Regulations (10 CFR) 73.37, "Requirements for Physical Protection of Irradiated Reactor Fuel in Transit," has changed little since its promulgation in 1980. It required licensees to establish a physical protection system for spent nuclear fuel shipments that meet specific criteria. It must minimize the possibilities for radiological sabotage of SNF shipments, and facilitate the location and recovery of SNF shipments that may have come under the control of unauthorized persons. There are other Nuclear Regulatory Commission regulations that support the protection of SNF shipments, such as 10 CFR, Section 73.72, "Requirement for Advance Notice of Shipment of Formula Quantities of Strategic Special Nuclear Material, Special Nuclear Fuel of Moderate Strategic Significance, or Irradiated Reactor Fuel," which requires licensees to notify the NRC in advance about shipments of SNF. One additional regulation is found in 10 CFR, Part 71, "Packaging and Transportation of Radioactive Material," establishes packaging requirements for packages used to transport SNF.

There are generally two categories of SNF shipments; commercial shipments from the NRC licensed facilities such as commercial nuclear powered reactors, research and test reactors, facilities for non-destructive testing and analysis of spent nuclear fuel, and the Department of Energy (DOE) managed SNF shipments which involve shipments to DOE owned interim SNF storage facilities.

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Since these rules were enacted, there have been significant changes to the threat environment. After the terrorist attacks of September 11, 2001, the NRC issued additional security-related orders primarily intended to ensure that SNF is shipped in a manner that protects the common defense and security, and the health and safety of the public.

General Comments.

The CHP supports enhancing the security requirements that apply to the transportation of SNF, and appreciates the opportunity to comment on the proposed rulemaking before final implementation. There are some points within the proposal that the CHP believes warrant further clarification. When the consequences of this type of shipment falling into the wrong hands are considered, there is little room in the regulations for assumptions or ambiguity. They must be clear and concise as to the training and equipment requirements of personnel both in, and out of the field.

Sections of Concern.

While there are some sections within the revision that the CHP agrees with, such as Section 73.37(a) (1) (i), which removes the distinction between heavily populated areas and other areas the SNF shipment may pass, allowing for consistency in the level of protection for the shipment along the entire route of travel; there are some added sections that need further clarification.

1. The addition of 10 CFR Section 73.37 (b) (1), creates a section titled "Preplan and Coordinate SNF Shipments," and require licensees to "instruct" armed escorts on the use of deadly force. It is not specific about the degree of force an armed escort may use in protecting shipments; however, it provides "performance objectives" to be met by the physical protection system. It uses the phrase "force sufficient to counter the force directed at the person," including the use of deadly force when there is a belief that it is necessary in self-defense or defense of others. The non-law enforcement armed guards are required to be knowledgeable of the state statutes for the states the shipment will pass through (consistent with the legal requirements of other private armed guards in a particular jurisdiction).

The training requirements for these non-law enforcement armed guards covered in Appendix D to Part 73, are generic in nature, and do not address the state and local requirements for each jurisdiction the load will potentially pass through. The requirement is that they complete "a training program." The minimum subject matter is addressed; however, the use of force is not covered in that training program relative to physical protection "in transit." The Radiological Considerations section of the requirements specifies federal, state, and local ordinances relative to the shipment of

radioactive materials, but does not cover response to threats.

The section also exempts local law enforcement agencies (LLEA) from the requirement in consideration that they should have received sufficient training on the federal and state restrictions regarding the use of deadly force. However, the term LLEA is not defined to clarify the inclusion of county and state agencies, such as the CHP, in the exemption.

Clarification should be added to address the training requirements for any accredited law enforcement agency at the federal, state or local level. This has greater importance since part of the revision in the preplanning and coordination efforts to minimize intermediate stops and delays, includes arranging for state law enforcement escorts of the type the CHP has provided in the past, and will continue to provide in the future.

2. The original 10 CFR Section 73.37 (b) (4), is re-designated as Section 73.37 (b) (3) (ii), and gives the movement control center (formerly communications center) the authority to direct physical protection activities. It will also clarify the duties of the movement control personnel. It does not address the training requirements of the personnel who will have the authority to direct the physical protection activities. There should be clarification of the level of training these personnel are required to meet for the performance of their job duties. If they are responsible for directing physical protection activities in the event of an incident during transit, whether they are not present at the location of the incident or event, the training requirements should address this issue.
3. The addition of 10 CFR Sections 73.37 (b) (3) (v), and (b) (3) (vii), will require the licensees to develop, maintain, and implement written procedures for the duties of the different personnel, but does not outline the training requirements of those personnel specific to their duties and responsibilities.
4. Clarification is needed regarding 10 CFR Section 73.37 (c) (1) (iii), which requires non-LLEA armed escorts to have a minimum of two weapons. It does not specify what two weapons can or should be carried. It also does not set limitations on what type of weapon can be carried. This section should specify that the weapons personnel are recommended to carry pursuant to the duties assigned that position, must be consistent with what is carried by other personnel with similar responsibilities in the jurisdiction of the route traveled.
5. The CHP agrees that 10 CFR Section 73.72 (b), is necessary to remove the exemption that says advance notification does not have to occur for shipments or transfers of SNF as long as the one-way transit time is one hour or less. However, it requires the shipper to only notify the NRC. The notifications must also include the CHP and the local law enforcement agency with jurisdiction over that area, since that would greatly reduce the

Secretary, U.S. Nuclear Regulatory Commission

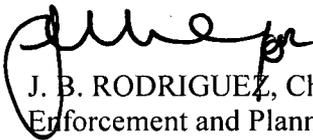
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response time of emergency responders in the event of a mishap or intentional incident. It would also ensure that this change does not conflict with existing regulations and interagency agreements between the DOE and the CHP. It also relieves the NRC of the burden of making the notifications in the event of an emergency where the other involved agencies had no advance notification of the shipment at all.

The CHP appreciates this opportunity to comment on the proposed regulations. The CHP believes that updating and improving the existing regulations is a step in the right direction since the consequences of this type of shipment falling into the wrong hands could be devastating to not only California, but to the country as a whole. The protection of the public is of the utmost concern to the Department. The safe and secure shipment of SNF requires coordination and cooperative collaboration between various federal, state, tribal, and local government agencies. It's important for our organizations to work together to create a safe and secure environment for transportation of these SNF shipments.

Sincerely,



J. B. RODRIGUEZ, Chief
Enforcement and Planning Division

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§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(a) *Performance objectives.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding, shall establish and maintain, or make arrangements for, and assure the proper implementation of, a physical protection system for shipments of such material that will achieve the following objectives"

(i) Minimize the possibilities for radiological sabotage of spent fuel shipments, especially within heavily populated areas; and

(ii) Facilitate the location and recovery of spent fuel shipments that may have come under the control of unauthorized persons.

(2) To achieve these objectives, the physical protection shall:

(i) Provide for early detection and assessment of attempts to gain unauthorized access to, or control over, spent fuel shipments;

(ii) Provide for notification to the appropriate response forces of any spent fuel shipment sabotage attempts; and

(iii) Impede attempts at radiological sabotage or spent fuel shipments within heavily populated areas, or attempts to illicitly move such shipments into heavily populated areas, until response forces arrive.

(b) *General requirements.* To achieve the performance objectives of paragraph (a) of this section, a physical protection system established and maintained, or arranged for, by the licensee shall:

(1) Provide for notification of the Nuclear Regulatory Commission in advance of each shipment, in accordance with § 73.72 of this part.

(2) Include and retain a copy of current procedures for coping with circumstances that threaten deliberate damage to a spent fuel shipment and with other safeguards emergencies as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

(3) Include instructions for each escort and retain a copy of the current instructions as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the activity that requires the instruction and retain any superseded material for three years after each change. The instructions must direct that, upon detection of the abnormal presence of unauthorized persons, vehicles, or vessels in the vicinity of a spent fuel shipment or upon detection of a deliberately induced situation that has the potential for damaging a spent fuel shipment, the escort will:

(i) Determine whether or not a threat exists;

(ii) Assess the extent of the threat, if any;

(iii) Inform local law enforcement agencies of the threat and request assistance; and

(iv) Implement the procedures developed in accordance with paragraph (b)(2) of this section.

(4) Include a communications center at a designated location, which will be staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards

emergency should arise.

(5) Provide for maintenance of a written log by the escorts and communications center personnel for each spent fuel shipment, which will include information describing the shipment and significant events that occur during the shipment, and will be available for review by authorized NRC personnel for a period of at least three years following completion of the shipment.

(6) Provide that arrangements have been made with local law enforcement agencies along the routes of road and rail shipments, and at U.S. ports where vessels carrying spent fuel shipments are docked, for their response to an emergency or a call for assistance.

(7) Provide for advance approval by the NRC of the routes used for road and rail shipments of spent fuel, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop.

(8) Provide that shipments are planned so that scheduled intermediate stops are avoided to the extent practicable.

(9) Provide that at least one escort maintains visual surveillance of the shipment during periods when the shipment vehicle is stopped, or the shipment vessel is docked.

(10) Provide that escorts (other than members of local law enforcement agencies, or ship's officers serving as unarmed escorts) have successfully completed the training required by appendix D of this part.

(11) Provide that shipment escorts make calls to the communications center at least every 2 hours to advise of the status of the shipment for road and rail shipments, and for sea shipments while shipment vessels are docked at U.S. ports.

(c) *Shipments by road.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by road shall provide that:

(1) A transport vehicle within a heavily populated area is:

(i) Occupied by at least two individuals, one of whom serves as escort, and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency; or

(ii) Led by a separate vehicle occupied by at least one armed escort, and trailed by a third vehicle occupied by at least one armed escort.

(2) A transport vehicle not within any heavily populated area is:

(i) Occupied by at least one driver and one other individual who serves as escort; or

(ii) Occupied by a driver and escorted by a separate vehicle occupied by at least two escorts; or

(iii) Escorted as set forth in paragraph (c)(1) of this section.

(3) Escorts have the capability of communicating with the communications center, local law enforcement agencies, and one another, through the use of:

(i) A citizens band (CB) radio available in the transport vehicle and in each escort vehicle;

(ii) A radiotelephone or other NRC-approved equivalent means of two-way voice communications available in the transport vehicle or in an escort vehicle committed to travel the entire route; and

(iii) Citizens band (CB) radio and normal local law enforcement agency radio communications in any local law enforcement agency mobile units used for escort purposes.

(4) The transport is equipped with NRC-approved features that permit immobilization of the cab or cargo-carrying portion of the vehicle.

(5) The transport vehicle driver has been familiarized with, and is capable of implementing, transport vehicle immobilization, communications, and other security procedures.

(d) *Shipments by rail.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by rail shall provide that;

(1) A shipment car within a heavily populated area is accompanied by two armed escorts (who may be members of a local

law enforcement agency), at least one of whom is stationed at a location on the train that will permit observation of the shipment car while in motion.

(2) A shipment car not within any heavily populated area is accompanied by at least one escort stationed at a location on the train that will permit observation of the shipment car while in motion.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications, which shall be available on the train.

(e) *Shipments by sea.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by sea shall provide that:

(1) A shipment vessel, while docked at a U.S. port within a heavily populated area, is protected by:

(i) Two armed escorts stationed on board the shipment vessel, or stationed on the dock at a location that will permit observation of the shipment vessel; or

(ii) A member of a local law enforcement agency, equipped with normal LLEA radio communications, who is stationed on board the shipment vessel, or on the dock at a location that will permit observation of the shipment vessel.

(2) A shipment vessel, while within U.S. territorial waters, or while docked at a U.S. port not within a heavily populated area, is accompanied by an escort, who may be an officer of the shipment vessel's crew, who will assure that the shipment is unloaded only as authorized by the licensee.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications.

(f) Prior to the transport of spent fuel within or through a state a licensee subject to this section shall notify the governor or the governor's designee. The licensee shall comply with the following criteria in regard to a notification:

(1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or through the state. A notification delivered by messenger must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state. A list of the mailing addresses of governors and governors' designees is available upon request from the Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR § 172.202 and § 172.203(d).

(iii) A listing of the routes to be used within the state.

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of §§ 73.21 and 73.22.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's state.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of §§ 73.21 and 73.22 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office

of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with § 73.37(f)(3), and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22.

[45 FR 37408, June 3, 1980, as amended at 47 FR 603, Jan. 6, 1982; 52 FR 31613, Aug. 21, 1987; 53 FR 19257, May 27, 1988; 60 FR 24552, May 9, 1995; 73 FR 63579, Oct. 24, 2008]

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Appendix D to Part 73--Physical Protection of Irradiated Reactor Fuel in Transit, Training Program Subject Schedule

Pursuant to the provision of § 73.37 of 10 CFR part 73, each licensee who transports or delivers to a carrier for transport irradiated reactor fuel is required to assure that individuals used as shipment escorts have completed a training program. The subjects that are to be included in this training program are as follows;

Security Enroute

- Route planning and selection
- Vehicle operation
- Procedures at stops
- Detours and use of alternate routes

Communications

- Equipment operation
- Status reporting
- Contacts with law enforcement units
- Communications discipline
- Procedures for reporting incidents

Radiological Considerations

- Description of the radioactive cargo
- Function and characteristics of the shipping casks
- Radiation hazards
- Federal, State and local ordinances relative to the shipment of radioactive materials
- Responsible agencies

Response to Contingencies

- Accidents
- Severe weather conditions
- Vehicle breakdown
- Communications problems
- Radioactive "spills"
- Use of special equipment (flares, emergency lighting, etc.)

Response to Threats

- Reporting
- Calling for assistance
- Use of immobilization features
- Hostage situations
- Avoiding suspicious situations

The licensee is also required to assure that armed individuals serving as shipment escorts, other than members of local law enforcement agencies, have completed a weapons training and qualifications program equivalent to that required of guards, as described in III and IV of appendix B of this part, to assure that each such individual is fully qualified to use weapons assigned him.

[44 FR 34468, June 15, 1979, as amended at 45 FR 34710, June 3, 1980]

42. Modes of transportation for SNM.
43. Road transport security system command and control structure.
44. Use of weapons.
45. Communications systems operation for transportation, shipment to control center and intraconvoy.
46. Vulnerabilities and consequences of theft of special nuclear material or radiological sabotage of a transport vehicle.
47. Protection of transport system security information.
48. Control of area around transport vehicle.
49. Normal convoy techniques and operations.
50. Familiarization with types of special nuclear materials shipped.
51. Fixed post station operations.
52. Access control system operation.
53. Search techniques and systems for individuals, packages and vehicles.
54. Escort and patrol responsibilities and operation.
55. Contingency response to confirmed intrusion or attempted intrusion.
56. Security system operation after component failure.
57. Fixed site security information protection.
58. Security coordination with local law enforcement agencies.
59. Security and situation reporting, documentation and report writing.
60. Contingency duties.
61. Self defense.
62. Use of and defenses against incapacitating agents.
63. Security equipment testing.
64. Contingency procedures.
65. Night vision devices and systems.
66. Mechanics of detention.
67. Basic armed and unarmed defensive tactics.
68. Response force deployment.
69. Security alert procedures.
70. Security briefing procedures.
71. Response force tactical movement.
72. Response force withdrawal.
73. Response force use of support fire.
74. Response to bomb and attack threats.
75. Response to civil disturbances (e.g., strikes, demonstrators).
76. Response to confirmed attempted theft of special nuclear material and/or radiological sabotage of facilities.
77. Response to hostage situations.
78. Site specific armed tactical procedures and operation.
79. Security response to emergency situations other than security incidents.
80. Basic transportation defensive response tactics.
81. Armed escort deployment.
82. Armed escort adversary engagement.
83. Armed escort formations.
84. Armed escort use of weapons fire (tactical and combat).
85. Armed escort and shipment movement under fire.
86. Tactical convoying techniques and operations.
87. Armed escort tactical exercises.
88. Armed escort response to bomb and attack threats.
89. Verification of shipment documentation and contents.
90. Continuous surveillance of shipment vehicle.
91. Normal and contingency operation for shipment mode transfer.
92. Armed personnel procedures and operation during temporary storage between mode transfers of shipments.
93. Armed escort threat assessment and response.
94. System for and operation of shipment vehicle lock and key control.
95. Techniques and procedures for isolation of shipment vehicle during a contingency situation.
96. Transportation coordination with local law enforcement agencies.
97. Procedures for verification of shipment locks and seals.
98. Transportation security and situation reporting, documentation, and report writing.
99. Procedures for shipment delivery and pickup.
100. Transportation security system for escort by road, rail, air and sea.

E. Requalification-Security personnel shall be requalified at least every 12 months to perform assigned security-related job tasks and duties for both normal and contingency operations. Requalification shall be in accordance with the NRC-approved licensee training and qualifications plan. The results of requalification must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's requalification as a record for three years from the date of each requalification.

III. Weapons training.

A. Guards, armed response personnel and armed escorts requiring weapons training to perform assigned security related job tasks or job duties shall be trained in accordance with the licensees' documented weapons training programs. Each

individual shall be proficient in the use of his assigned weapon(s) and shall meet prescribed standards in the following areas:

1. Mechanical assembly, disassembly, range penetration capability of weapon, and bullseye firing.
2. Weapons cleaning and storage.
3. Combat firing, day and night.
4. Safe weapons handling.
5. Clearing, loading, unloading, and reloading.
6. When to draw and point a weapon.
7. Rapid fire techniques.
8. Close quarter firing.
9. Stress firing.
10. Zeroing assigned weapon(s).

IV. Weapons qualification and requalification program.

Qualification firing for the handgun and the rifle must be for daylight firing, and each individual shall perform night firing for familiarization with assigned weapon(s). The results of weapons qualification and requalification must be documented by the licensee or the licensee's agent. Each individual shall be requalified at least every 12 months. The licensee shall retain this documentation of each qualification and requalification as a record for three years from the date of the qualification or requalification, as appropriate.

A. Handgun--Guards, armed escorts and armed response personnel shall qualify with a revolver or semiautomatic pistol firing the national police course, or an equivalent nationally recognized course. Qualifying score shall be an accumulated total of 70 percent of the maximum obtainable score.

B. Semiautomatic Rifle--Guards, armed escorts and armed response personnel, assigned to use the semiautomatic rifle by the licensee training and qualifications plan, shall qualify with a semiautomatic rifle by firing the 100-yard course of fire specified in section 17.5(1) of the National Rifle Association, High Power Rifle Rules book (effective March 15, 1976),¹ or a nationally recognized equivalent course of fire. Targets used shall be as stated in section 17.5 for the 100-yard course. Time limits for individuals shall be as specified in section 8.2 of the NRA rule book, regardless of the course fired. Qualifying score shall be an accumulated total of 80 percent of the maximum obtainable score.

C. Shotgun--Guards, armed escorts, and armed response personnel assigned to use the 12 gauge shotgun by the licensee training and qualifications plan shall qualify with a full choke or improved modified choke 12 gauge shotgun firing the following course:

Range	Position	No. Rounds ¹	Target ²
15 yds	Hip fire point	4	B-27
25 yds	Shoulder	4	B-27

¹The 4 rounds shall be fired at 4 separate targets within 10 seconds using 00 gauge (9 pellet) shotgun shells.

²As set forth by the National Rifle Association (NRA) in its official rules and regulations, "NRA Target Manufacturers Index," December 1976. The Index has been approved for incorporation by reference by the Director of the *Federal Register*. A copy of the index is available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20852-2738.

To qualify the individual shall be required to place 50 percent of all pellets (36 pellets) within the black silhouette.

D. Requalification-Individuals shall be weapons requalified at least every 12 months in accordance with the NRC approved licensee training and qualifications plan, and in accordance with the requirements stated in A, B, and C of this section.

V. Guard, armed response personnel, and armed escort equipment.

A. Fixed Site--Fixed site guards and armed response personnel shall either be equipped with or have available the following security equipment appropriate to the individual's assigned contingency security related tasks or job duties as described in the licensee physical security and contingency plans:

1. Semiautomatic rifles with following nominal minimum specifications:

- (a) .223 caliber.
- (b) Muzzle velocity, 1980 ft/sec.