Gallagher, Carol

From: William Schaefer [williams@cvsa.org]
Sent: Wednesday, January 19, 2011 3:21 PM
To: Gallagher, Carol
Cc: Steve Keppler
Subject: NRC-2010-0194 Implementation Guidance for Physical Protection of Byproduct Material
Attachments: CVSAComments_NRCDockets_01111_Final.pdf

Dear Ms. Carol Gallagher:

We spoke on the phone earlier this afternoon. I told you that I was trying to submit comments to a docket, the NRC-2010-0194, "Implementation Guidance for Physical Protection of Byproduct Material; Category 1 and Category 2 Quantities of Radioactive Material", which closed yesterday and is thus inactive for online submitting. You indicated I can send our comments to you.

Please see our comments for that docket attached. Also, for your information, I was able to submit this same document online to the other dockets to which they apply (see the subject line within the enclosed document for the list of three docket numbers).

Thank you very much for your help with our submittals.

Sincerely,
Will Schaefer

7/14/2010
75 FR 40756
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SUNSI Review Complete
Template = ADM-013

E-RIDS = ADM-03
Add = P. Gwalthney (PLG)
M. Thorn (mlh1)

Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

January 18, 2011

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
Nuclear Regulatory Commission
Washington, DC 20555-001

Re: **Docket ID NRC-2010-0194**, *Implementation Guidance for Physical Protection of Byproduct Material; Category 1 and Category 2 Quantities of Radioactive Material*;
Docket ID NRC-2009-0163, *Physical Protection of Irradiated Reactor Fuel in Transit*; and,
Docket ID NRC-2010-0340, Draft Report for Comment, NUREG-0561, Rev. 2, *Physical Protection of Irradiated Reactor Fuel in Transit.*

Dear Ms. Bladey:

The Commercial Vehicle Safety Alliance (CVSA) appreciates the opportunity to provide comments to the Nuclear Regulatory Commission's (NRC) Docket numbers NRC-2010-0194, NRC-2009-0163 and NRC-2010-0340.

CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. Our mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement, industry and policy makers. In addition, CVSA has several hundred associate members who are committed to helping the Alliance achieve its goals; uniformity, compatibility and reciprocity of commercial vehicle inspections, and enforcement activities throughout North America by individuals dedicated to highway safety and security.

Because all three of these dockets concern the physical protection of radioactive materials in transit, and the overall effect on State agencies is roughly the same for each type of transport, the comments here are made as applicable as possible to all dockets. In general, we feel that the dockets should be as coordinated in effect as possible, to avoid confusion, minimize different regulatory burden except as absolutely necessary, and avoid unintended consequences.

Consistency in definitions: Presently the NRC's definition of a safe haven is different than the U.S. DOT's definition of a safe haven. The U.S. DOT does not provide a definition in Part 397 of a "safe haven" for radioactive materials; it is used only for

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certain DOT Class 1 (Explosive) materials. NRC has two different definitions of "safe haven" in its two proposed guidance documents:

> 10 CFR Part 37, proposed §37.75, Question and Answer Number 4: "A safe haven is defined as '[a] readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.' The NRC expects safe havens to be identified and designated by the licensee based on discussions with appropriate State personnel."
>
> Draft NUREG-0561, Section 1.3: "*Safe haven:* a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for LLEAs. A safe haven is an area that can provide prudent security measures when a shipment is removed from transit because of an elevated threat condition."

Because the intent is obviously the same, NRC needs to have internal consistency over what it considers to be an acceptable safe haven, so that the "appropriate State personnel" can have proper, meaningful, and consistent input for NRC's licensees and their transport contractors, as well as the Department of Energy, on acceptable safe havens.

Consistency in the way the Regulations and Guidance treat State and Local Law Enforcement Agencies: In proposed §37.45(a)(2) guidance, NRC states, "The NRC recognizes that it cannot exercise authority over LLEAs, or any party, over which a licensee has no control and the NRC has no legal jurisdiction." This needs to be repeated often throughout both regulations and guidance for both Category 1 and 2 byproduct material and for Irradiated Fuel. In the Draft NUREG-0561, NRC states that law enforcement are considered adequately trained, but goes on to state that, "However, a member of an LLEA should be briefed on the shipment procedures as necessary for the performance of the escort functions." These statements have in the past led licensees and contractors to attempt to require certain training of State officers, or certain assurances from State agencies that they will meet NRC requirements. In all cases, it needs to be made clear to licensees, transporters and NRC inspectors that the NRC does not generally have jurisdiction over these agencies, except with regard to the handling of safeguards information.

Consistency in Routing Requirements: In Draft NUREG-0561, Section 2.1.1, NRC explicitly discusses routing requirements and adherence to 10 CFR §71.5 and the U.S. DOT Routing requirements of 49 CFR Part 397. However, in proposed 10 CFR §37.75 and its associated guidance, NRC appears to only mention in passing the requirements for Highway Route Controlled Quantities (HRCQ) and does not address the potential applicability of 49 CFR Part 397 to Category 1 and 2 Quantities of Byproduct Material. Radioactive material shipments which are required to be placarded pursuant to 49 CFR Part 172, Subpart F, or 49 CFR Part 173, Subpart I, are subject to U.S. DOT Routing restrictions. In addition, depending on the size and gross weight of the vehicle used to transport radioactive material, some states and local jurisdictions may have truck routing restrictions, or have bridges that are restricted to certain weights. In addition, holidays, special events, weather, and other issues may impact the desired timing of shipments by licensees and transporters. NRC should ensure that the guidance for

Irradiated Fuel, Highway Route Controlled Quantities, and non-HRCQ Category 1 shipments includes requirements for routing coordination and shipment timing with State and Local agencies. However, NRC also needs to recognize that its detailed routing requirements for licensees could impose a burden on States who may have limited resources to help licensees and transporters to evaluate routes.

In the October 13, 2010 NPRM, at 75 FR 62299, NRC makes the blanket statement, "Spent nuclear fuel shipments fall under the DOT's definition of HRCQ." This is not always the case. Georgia has experience with spent fuel shipments from two different university reactors where the quantity of nuclides fell below HRCQ, and the shipments did not have radiation levels or transport indices that required Yellow III labels. Therefore, these shipments would not be subject to the routing requirements of 49 CFR Part 397, because placards are not required. NRC needs to address these types of shipments in its rules, because the U.S. DOT regulations are silent as to routing of these types of shipments. At the same time, there may be Category1 byproduct shipments that also do not reach HRCQ, and, if properly packaged, would also not need Yellow III labels or placards. These shipments also "fall through the cracks" of 49 CFR Part 397 and routing should be addressed by NRC, or NRC should petition DOT to address non-placardable radioactive materials shipments in 49 CFR Part 397.

NRC should also know that in the current environment, some shippers appear to be taking longer routes to avoid state fees for radioactive materials. If longer transit times truly degrade security, NRC needs to require licensees to use the shortest transit time routes and advise them to seek other administrative remedies to issues of fees.

Allowance for State Inspections: In all cases, NRC emphasizes the need to reduce "unnecessary delays." However, many States have legal requirements to inspect shipments of radioactive materials that transit their State. In addition, for Highway Route Controlled Quantities (HRCQ), 49 CFR Part 385 requires the carrier to have a valid Hazardous Materials Safety Permit from the Federal Motor Carrier Safety Administration. In order for the permit to be valid for HRCQ, the vehicle, driver(s) and cargo must successfully pass an Inspection as described in 49 CFR §385.415(b)(1). Those operational requirements also may require a complete en-route inspection under defined sets of circumstances (replacement of driver, replacement of vehicle, a significant vehicle defect occurs, or in case of a vehicle collision). In NUREG-0561, §73.37, and Part 37 and associated guidance, NRC should explicitly allow for State or Federally mandated inspections.

Consistency in Advance Notification Requirements: In 10 CFR §71.97 and §73.37, NRC requires the advance notification to a Governor or their designee to include the U.S. DOT Shipping Description required by 49 CFR §§172.202 and 172.203. NRC should make the same requirement explicit in the proposed §37.77 and its associated guidance. In addition, the NRC needs to provide guidance to licensees and transporters across all of these transportation types that they may need to separately notify and coordinate with State or Local law enforcement agencies that they expect to provide escort or site security, especially given the short notification time allowed (7-day postmark or 4-day other system). Such guidance would ensure that licensees need not fear violating security requirements by separately discussing shipments with necessary law enforcement agencies.

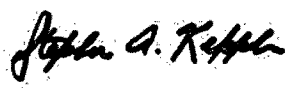
Access by LLEA escorts to Shipment Status and Location: For shipments to the Waste Isolation Pilot Plant, and other Department of Energy-related shipments, the Department of Energy provides the TRANSCOM system to allow states and Indian Tribes to monitor shipment movement and better coordinate escort and inspection resources. For other shipments, escorts and inspectors area often literally "in the dark" as to a shipment's location or expected arrival time. For all shipments, whether HRCQ, Irradiated Fuel, or Category1 Byproduct material, not on a directly accessible system, such as TRANSCOM, NRC must require licenses and transporters to devise a secure system to advise, update, and allow status call-in by affected State and Local personnel. This is especially true of long-transit shipments. States have frequently encountered variations of up to 6 hours early or late on all types of radioactive materials shipments. This imposes unnecessary costs in time, personnel, fuel, and other limited resources.

Consistency in Security Requirements and Guidance: NRC already provides for security requirements 10 CFR Part 73, and proposes security requirements in part 37 and its associated guidance for Category 1 Byproduct material. Given the broader use and wider variety of materials and facilities covered under Part 37, NRC needs to make sure that its guidance avoids the potential pitfall noted above of appearing to impose requirements on State and Local agencies over which it has essentially no jurisdiction. NRC does a credible job in its guidance that licensees must coordinate with LLEA, but the guidance for licensees, transporters, and NRC staff needs to be abundantly clear that (1) State and Local agencies are not subject to NRC requirements (except with regard to Safeguards Information handling), and (2) given limited resources, the ability of State and Local agencies to provide resources or assistance may be a dynamic, ever-changing capability.

Special Note about Security: If NRC intends to tie both site and transport security to Homeland Security alert levels, NRC, its licensees, and their contractors and transporters need to understand that a change in Homeland Security alert level often drives resource allocation of State and Local agencies, and that an elevation of the alert level, a National Special Security Event, or the discovery of a particular threat may result in the sudden withdrawal of State or Local assets without prior notice or warning to the licensee and/or their contractors.

Thank you very much for your consideration of our comments. We would be happy to discuss these with you further should you wish to do so.

Sincerely,



Stephen A. Keppler
Executive Director

CC: Larry Minor, Federal Motor Carrier Safety Administration
Magdy El-Sibaie, Pipeline and Hazardous Materials Safety Administration