

Rulemaking Comments

From: gary.l@ramtasc.com
Sent: Monday, April 11, 2011 5:18 AM
To: Rulemaking Comments
Subject: NPRM NRC-2009-0163-10CFR73
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April 11, 2011 (9:55 am)

NRC Rulemaking
Attn: Carol Gallagher
11555 Rockville Pike
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

The following comments on NRC Proposed Rulemaking for Docket ID: NRC-2009-016310CFR73 are provided for your consideration. The email version of my comments is not formatted as well as the attached Word document, but both are provided for your consideration. The comments are organized in order of the items the State of Nevada submitted in their Petition for Rulemaking (PRM). Separate items included in the NPRM by NRC staff are included at the bottom of my list of comments. I appreciate this opportunity to offer my comments and am hopeful the final revised rule will support increased security without negative effects on safety.

I am also hopeful the final rule will ensure objective security and safety criteria are used for routing decisions and that political influence on route selection is minimized.

- The NRC denied Nevada's first request in their PRM to expand the definition of "hand carried equipment". The NRC stated this was a settled matter & I support that decision. No further expansion of the term is needed.
- Comment on PRM item 2: Nevada requested the NRC to redefine radiological sabotage to include acts intended to cause economic or social disruption. This would be problematic as the degree of disruption is a very subjective determination, and Nevada has retained "subject matter experts" that have placed extraordinarily high estimates on economic impacts that have not been peer reviewed, and are not supported by the analyses generated through Environmental Impact Statements prepared by the Department of Energy for the Yucca Mountain Program, or by studies performed by the DOE National Laboratories. The NRC did not specifically address economic or social disruption, but they did expand the definition of radiological sabotage to include theft and diversion in the rule. This should be OK, but caution is needed in the way protections against theft or diversion are pursued. I cover that general concern in my comment on PRM Item 6.
- Comment on Nevada's PRM item 3 - Nevada asked the NRC to amend the pre-notification requirements and the routing requirements to align with the route selection criteria in NUREG-0561. Specifically, Nevada asked that the NUREG specifically preclude shipments through highly populated areas. This would be problematic and could conflict with the railroad's responsibilities under the rail safety and security act of 2009. Avoiding populated areas could require shipments on lower quality track. That would increase the accident risk. The trade-off between increasing security from speculative acts of terrorism by decreasing safety is not wise. I agree with the NRC's decision to NOT incorporate specific routing requirements into their proposed rulemaking, but question whether the required planning with states would not have the same result. The specific roles of states versus the railroads versus the shipper of record are not well defined. If consensus is required on shipment routes, that would potentially allow states to block shipments along the safest routes by refusing to approve routes recommended by the railroads. This would serve to undo the carefully crafted responsibilities in the Rail Safety Improvement Act of 2008. That act requires railroads to use objective data as the basis for selecting routes that provide the best overall combination of safety and security. The role of states needs to be limited to an advisory role to preclude politicizing the route selection process.

The NRC rule should simply defer to the DOT final rulemaking for balanced consideration of safety and security data in consultation with states.

- Comment on PRM item 4 & 5 - Nevada requested armed escorts for the entire transportation effort, not just in heavily populated areas. That was already part of most shipment plans, and incorporating this change into the revised order makes sense.
- Comment on Nevada's PRM item 6 - This PRM had several sections. I'm providing my comments on each section separately.

o Nevada requested that the NRC add the same planning and scheduling requirements for spent nuclear fuel shipments as those required for formula quantities of special nuclear material by § 73.26(b). The regulations in § 73.26(b) require that shipments be scheduled to avoid delays and stops, and to ensure timely delivery of the shipment. The NRC agrees that improvements are needed in the planning and coordination of shipments and has addressed this concern in the proposed amendment. The proposed §§ 73.37(b)(3)(v) and (b)(4) would expressly require that licensees shipping spent nuclear fuel develop normal and contingency procedures. These procedures would cover notifications; communication protocols; loss of communication; and responses to actual, attempted, or suspicious activities. The proposed revisions would also require drivers, accompanying personnel, railroad personnel, and other movement control personnel to be adequately trained in normal and contingency procedures.

These proposed requirements are intended to ensure that all personnel associated with the shipment are prepared to prevent the theft, diversion, or radiological sabotage of spent nuclear fuel shipments. This is a significant expansion of current responsibilities for carriers, especially considering the presence of armed escorts with each shipment. With the significant turnover in rail personnel during the conduct of a shipment across the country, it isn't practicable to effectively train all of these people to prevent theft, diversion, or sabotage of these shipments. The security role should remain the province of specially trained security escorts required for all shipments. If expanded coverage is needed, then the NRC should focus on expanding the authority of the security escorts, not on bandage attempts to convert railroad personnel into security professionals. Potential conflicts between the escorts and shipment personnel in appropriately responding to an event could be disastrous. The training for shipment personnel should be limited to ensuring they understand the authority and responsibilities of the armed escorts and support them as required.

o The proposed § 73.37(b)(3)(i) would replace the term "communications center" with the term "movement control center." The proposed § 73.37(b)(3)(ii) would also require that the movement control center be staffed continuously by at least one individual, who will actively monitor the progress of the spent nuclear fuel shipment and who has the authority to direct the physical protection activities. Communications personnel located in a remote facility are not in the position to effectively "direct physical protection activities". This function is best served by the commander of the escort force with direct knowledge of the events as they unfold on the scene of the incident. The role of the Movement Control Center should be limited to supporting and advising the armed escort force, and not to directing security activities. If communications with the escorts is severed, then the Movement Control Center staff could reasonably have a backup responsibility to activate other security personnel that would then link with the armed escorts and a hierarchy of incident command could be established with the armed escorts being the first level, state security response becoming the second level, and federal response becoming the highest level. The basic model used for establishing incident command for emergency response could be adapted for security responses, but direction of the response should never be assigned to a remote Movement Control Center.

- Comment on Nevada's PRM item 7 - Nevada requested the NRC to mandate that all spent nuclear fuel rail shipments be made in dedicated trains. The NRC determined that the same security provisions would be in place regardless of the type of train service. Since both mixed use, and dedicated train service would have the same security requirements, the NRC declined to add this provision to the rule. That was a good call.

- Comment on Nevada's PRM item 8 - Nevada asked the NRC to conduct a

comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage. The NRC denied this aspect of the petition based on their previous denial on December 7, 2009 (74 FR 64012). I also support that decision.

Other comments on changes proposed by the NPRM:

- There is a change to the requirement for 2 redundant communications systems. This is good because the old language specifically called out what those systems should be. The new language leaves the selection of redundant systems to the shipper. That provides additional flexibility and accommodates changes in technology and is a good change.
- Another change would require background investigations (including fingerprinting) for individuals desiring unescorted access to the cargo while in transit. That should not cause any challenges to the transportation industry, since the licensee will bear the burden of these investigations and final determination of who should, and should not have unescorted access. This should be OK
- There is a provision for enhanced communications with NRC. The original rule required a 2 day notification before the shipment began. The new requirements add a 2-hour notification before movement commences, and a notification when the shipment reaches its intended destination. The change also removes the exemption for shipments travelling an hour or less from origin to destination. This should be manageable.
- There is a provision to revise § 73.37(a)(1) to include the International System of Measurement (SI) accompanied by the equivalent English units in parentheses for the weight and dose rate measurements. This is part on a long-term metrification effort by the NRC and should be OK.
- There are miscellaneous changes to terminology that do not affect transportation activities and they should be OK.

Thank you for the opportunity to provide these comments.

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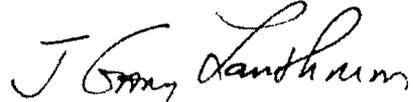
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