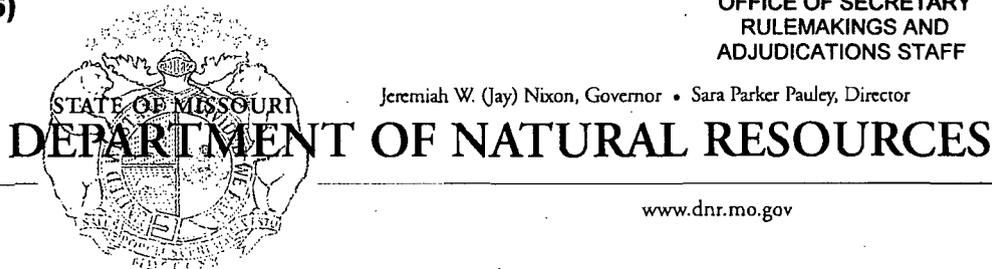


PR 73
(75FR62695)

April 12, 2011 (10:15 am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

April 6, 2011

Secretary, U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudication Staff
Washington, DC 20555-0001

Re: Docket NRC-2009-0163
Physical Protection of Irradiated Reactor Fuel in Transit

Dear Secretary:

The Missouri Department of Natural Resources (department) appreciates the opportunity to review the Nuclear Regulatory Commission's (NRC) proposed rule for Physical Protection of Irradiated Reactor Fuel in Transit. As Missouri is a corridor state for numerous radioactive shipments, the department is interested in making sure that the safety of the citizens of Missouri is given sufficient consideration as this rule is revised. The department offers the following comments for consideration.

General Comments

The department commends the NRC commissioners for their decision to establish by rule "acceptable performance standards and objectives for the protection of spent nuclear fuel shipments from theft, diversion, or radiological sabotage," as the current regulation solely addresses potential radiological sabotage of spent nuclear fuel shipments. This is an appropriate post 9/11 change.

The department particularly supports inclusion of a new section 73.37(b)(1)(iv), which requires licensees to "preplan and coordinate shipment information with the governor of a State, or the governor's designee." This requirement provides the mandate needed for licensees to discuss sensitive information with state and local officials, planners and emergency responders who play a role in safe, secure shipment of spent nuclear fuel through their jurisdiction.

As the final rule may differ from the proposal currently under review, it will be important to allow the states and other stakeholders another opportunity to comment on the guidance document following publication of the final rule.

Preplanning and Coordination of Spent Nuclear Fuel Shipments

The department appreciates the addition of a requirement that licensees preplan and coordinate shipments in cooperation with the Governor or Governor's designee in corridor states. This new



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requirement will facilitate partnerships to help to “mitigate ...theft, diversion, or radiological sabotage.” However, the actual wording does not necessarily “ensure that States have early and substantial involvement in the management of spent nuclear fuel shipments” (p. 62700). The rule would be improved by specifying a timeframe for preplanning and coordination. It is important that states be involved throughout the shipment planning process, not just the initial or final stages where licensees discuss steps to minimize intermediate stops and delays; arrange for state law enforcement escorts; arrange for positional information sharing when requested; and identify safe havens. The department considers it essential that preplanning and coordination include offsite response teams (e.g., hazmat teams) that will be called upon in the event of an emergency, and such an effort will require a certain amount of lead time.

Also, in 10 CFR 73.37(b)(1)(iv)(A) and section 2.2.1 Avoidance of Intermediate Stops, the rule and guidance document should clarify that the language “minimize intermediate stops and delays” should allow for inspections by the states at the first secure location upon entry into the state by road, or at an appropriate predetermined location for rail shipments.

Route Selection Regarding Heavily Populated Areas

The department agrees that the new requirement for licensees to preplan and coordinate shipments with states has the potential to “minimize movement of spent nuclear fuel through heavily populated areas” (p. 62698). The department is concerned, however, that the requirement for licensees to “develop route information, including the identification of safe havens” does not necessarily realize the objective of “minimizing movement...through heavily populated areas.” While it is impossible to completely avoid heavily populated areas when traveling by road or rail, the guidance document does not provide sufficient information to make it clear that a primary goal of preplanning and coordinating with states on route selection is to keep shipments out of heavily populated areas. The department recommends that this purpose be stated explicitly. In addition, the guidance document should clarify how the route selection criteria should be used to minimize movement through heavily populated areas, and explain how licensees and states should balance travel through populated areas with minimization of travel time. Is there a weighted scale to use in evaluation of these criteria? Or, when choosing between two nearly identical routes, does a ten, thirty or sixty minute shorter travel time warrant travel through areas with 100,000 or more people? Within what distance from the route should population be considered?

Notifications

The department requests a change to the advance notification provision so that notifications to the states and to the NRC – regardless of the delivery mode – should be *received* 10 days prior to the shipment. This change would reduce the burden on states that are involved in shipment-related activities, as it is increasingly difficult for states to schedule inspections and/or escorts on short notice, particularly in light of budget constraints and related staffing reductions. The challenge is increased for rail shipments. With a full 10 days advance notice, it will be easier for states to make the necessary staffing arrangements for escorts, and this will conform to notification requirements for the NRC.

The addition of notifications to the states two hours before commencement of the shipment and again once the shipment has reached its destination is very helpful. The two hour notification provides time for staff to reach their staging position, without unnecessary time spent in waiting for shipment arrival. The final notification that the shipment has reached its destination would alert the states that communications regarding the shipment can be sent without compromising the shipment's safety.

Rail Shipments

Because there are sufficient differences between road and rail shipments, the department is highlighting the needs of rail shipments separately in our comments.

In reference to 73.37 (d)(1), (p. 62712), regarding shipments by rail, the department recommends the following revision: "A shipment car is accompanied by two armed escorts, *or two special agents/police officers of the host railroad if the railroad agrees to provide them,...*" Local law enforcement may not be the most practical escorts to have on a train that will traverse multiple states - this change would allow, but not require, the railroad to provide their own armed escorts if they desire. Some railroads would prefer to utilize their own employees, who would be familiar with rail policies and procedures.

Inspections of rail shipments by states has been a contentious issue in the past, as railroads do not plan stops near state borders. The department recommends that, section 73.37 (d) be clarified to address this issue by adding a statement similar to the following: Physical inspections of rail shipments by representatives of individual states, if they are requested by state representatives, may occur at places other than at the state line if agreed to by the representatives of the various states and the railroad.

A state line is usually an inconvenient place to inspect a train, as there might be no highway access or crossings. A state line could be located where the only way to reach the border is to walk miles down the railroad track. An inspection at a state border may also affect the railroad's operations, because there may not be a siding available at the state's border, resulting in blocking trains in both directions. Licensees should coordinate with the states and the railroads to confirm a safe location for inspections. The result may be that several states in a region will inspect a shipment in one location, rather than in each individual state.

Under section 73.37(b)(1)(iv)(A), (p. 62710), the rule and the guidance document should clarify that the language regarding minimizing stops and delays is not intended to eliminate state inspections of shipments, whether by road or rail. The department suggests addition of language that clarifies that "the purpose of minimizing stops and delays is not to eliminate inspections by the various states."

In section 73.38 (p. 62713), the regulation should clarify whether requirements for background investigations apply to state railroad inspectors, as they may need to be in proximity to the shipment in order to conduct an inspection, but will not need unescorted access to the shipment.

U.S. Nuclear Regulatory Commission

April 6, 2011

Page 4

The rule states "The background investigation does not apply to Federal, State or local law enforcement personnel who are performing escort duties." The department recommends that state railroad inspectors be added to this exemption for state personnel, or that language similar to the following be added to address this issue: "All background checks shall be waived for state rail inspectors seeking to inspect shipments by rail who are currently in good standing and certified by the Federal Railroad Administration as an inspector in any discipline for which the Federal Railroad Administration has current responsibility in enforcing."

We appreciate the opportunity to provide comments for Docket NRC-2009-0163, Physical Protection of Irradiated Reactor Fuel in Transit. If you have any questions or need clarification, please contact me or Ms. Jane Beetem, phone number (573) 751-3195. The address for correspondence is Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102. Thank you.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES



Dru Buntin
Deputy Director for Policy

DB:bjb

PUBLIC SUBMISSION

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Docket: NRC-2009-0163
Safeguarding Shipments of Spent Fuel

Comment On: NRC-2009-0163-0010
Physical Protection of Irradiated Reactor Fuel in Transit; Extension of Comment Period

Document: NRC-2009-0163-DRAFT-0018
Comment on FR Doc # 2011-00214

Submitter Information

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Jefferson City, MO, 65102
Organization: MO Dept. of Natural Resources
Government Agency Type: State
Government Agency: MO Department of Natural Resources

General Comment

See attached file(s)

Attachments

NRC-2009-0163-DRAFT-0018.1: Comment on FR Doc # 2011-00214

Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, April 12, 2011 9:25 AM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Physical Protection of Irradiated Reactor Fuel in Transit
Attachments: NRC-2009-0163-DRAFT-0018.pdf

Van,

Attached for docketing is a comment from Dru Buntin on the above noted proposed rule (3150-AI64; 75 FR 62695) that I received via the regulations.gov website on 4/11/11.

Thanks,
Carol