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DOCKET NUMBER <sup>18</sup>  
 PROPOSED RULE PR-73(44FR 34466)



August 16, 1979

Secretary of the Commission  
 U.S. Nuclear Regulatory Commission  
 Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Comments on Interim Final Rule for the Physical  
 Protection of Irradiated Reactor Fuel in Transit,  
 10CFR 73.37, (44FR34466, June 15, 1979)

Gentlemen:

These comments are submitted on behalf of the Subcommittee  
 on Transportation of the Atomic Industrial Forum's Committee  
 on Nuclear Fuel Cycle Services.

The Atomic Industrial Forum, Inc. is an international  
 association of organizations and individuals interested and  
 active in the commercial development and use of nuclear  
 energy for peaceful purposes. Established in 1953, the AIF  
 has over 600 organization members, including electric utilities,  
 manufacturers, engineers, constructors and numerous other  
 organizations, both private and governmental.

General Comments:

The Subcommittee considers the NRC has overreacted to  
 the remote possibility of an undefined and ambiguous threat  
 by requiring immediate effectiveness of a rule of questionable  
 need and desirability.

This Subcommittee position is based on:

1. Department of Energy statements on the lack of justifi-  
 cation of the rule,\*
2. The absence of any defined threat to spent fuel shipments  
 and
3. The thirty year history of successful shipments in both  
 military and commercial sectors.

We therefore urge that the Interim Final Rule and the  
 associated Interim Guidance be modified significantly to  
 reflect our specific comments, the reality of the sabotage/  
 release scenario and the results of the confirmatory research.

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Notwithstanding the Subcommittee's belief that the risk (defined as probability times consequence) of a successful sabotage attempt is extremely small, we recognize the public's concern and endorse a coordinated effort by industry and government to allay these concerns in a realistic manner.

However, the sabotage threat should not be considered in a vacuum; the total effect on public health and safety of alternate solutions must be evaluated giving appropriate weight to overall logistics and practicable routes.

The Subcommittee recognizes that the NRC will probably have to keep the Interim Final Rule in place until such time as the appropriate modifications can be made. We believe that during this interim period the Rule would be implementable if interpreted reasonably and not used to effectively ban spent fuel shipments. As a minimum, travel on interstate highways and mainline railroads should be permitted - with some practical level of armed guard protection and communication - through urban areas. Furthermore, where urban areas are being used for DOE or military operations or shipments, civilian nuclear shipments should be permitted - again with appropriate and practical security and communication systems.

The Subcommittee offers the following comments and recommendations on specific sections of the Rule and the Interim Guidance:

Specific Comments:

73.37 (a) (1) The Nuclear Regulatory Commission is notified in advance of each shipment in accordance with §73.72 of this Part, and that NRC has approved the route in advance of the shipment.

Comment: The NRC should establish criteria for route approvals and apply such criteria consistently. Alternate routes should be approved to provide flexibility to the shipper and cause confusion and difficulty to a potential saboteur. Dissemination of the approved routes and of the information provided to NRC in advance of each shipment should be restricted to an absolute minimum number of people in keeping with well established security procedures.

Routes which have been routinely used in the past for research and commercial spent fuel shipments and routes used by the military for spent fuel shipments should be approved automatically.

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The advance notification to NRC should be the only notification required by the shipper. The requirements of various agencies for advance notification and permits should be consolidated in order to avoid duplication of effort by shippers and governmental agencies. If shippers obtain a permit at the federal level, it should be coordinated with the applicable local governmental agencies such that it is the only permit required. Otherwise, a series of permits will be required, each with potentially conflicting requirements.

73.37 (a) (2) Arrangements have been made with law enforcement agencies along the route of shipments for their response to an emergency or a call for assistance.

Comment: The specific nature of these "arrangements" should be indicated.

73.37 (a) (3) The route is planned to avoid, where practicable, heavily populated areas.

Comment: The requirement for avoidance of urban areas must not be interpreted as an absolute. Routes which go through or near the defined urban areas on divided, limited access highways of four or more lanes should be approved automatically. Routes on mainline railroads should also be given approval to traverse urban areas.

We believe that interstate highways and well maintained, frequently inspected railways are the safest, fastest, most reliable routes available for overland spent fuel transport.

One justification for the development of the Interstate Road System was to provide quick and safe transportation of men, material, and equipment in case of war or any national or local emergency. Our history in the use of the Interstate Road System has proven these roads indeed provide the safest routing for transport, both in urban and rural areas. These are the best highways to transport all commodities including spent nuclear fuels.

We believe that using interstate highways and the best railways while minimizing in city stops results in the safest, most secure route. A truck can go through a city on a interstate highway without any stops. The regulation gives over-

riding concern to avoiding heavily populated areas without mention of the desirability of interstate highways and superior railways. This will lead to a reduction in safety and security.

Provision can be made for appropriate armed guards and escorts when a shipment is in an urban area.

Paragraph IIB on page 8 of NUREG-0561 states that shipments may transit heavily populated areas if "there are no alternate routes because laws, ordinances, or regulations of local jurisdictions embargo such shipments." We recommend that this criterion be eliminated. If the NRC is to exercise control over spent fuel routes it may consult with local authorities about routes in their areas, but it must not defer to local embargoes which may prevent use of acceptable routes. The NRC should exercise its legal responsibilities and preempt conflicting local laws when necessary.

73.37 (a) (6) Procedures for coping with threats and safeguards emergencies have been developed.

Comment: The "threat" is not defined in either the rule or the guidance document. It is impossible to develop procedures for coping with an undefined level of threat.

73.37 (b) (1) Each shipment is accompanied by [i] at least one driver and one escort in the transport vehicle, or [ii] at least one driver in the transport vehicle and two escorts in a separate vehicle.

Comment: The escort in the transport vehicle will probably be a second qualified driver. To comply with DOT hours of service rules one or the other of the drivers will probably be in the sleeper berth during most of the trip. It should be made clear that this is permissible.

73.37 (c) Shipments by rail

Comment: The Subcommittee considers the possibility of successful sabotage of a rail shipment of spent nuclear fuel to be extremely remote. The proposed regulations in ¶73.37 (a) and in ¶73.37 (c) do not appear to recognize characteristic differences of railroad and truck operations. We suggest the

NRC propose revised rules which consider the unique operating requirements of railroads including the inherent difficulties of hijacking a train or sabotaging a rail cask.

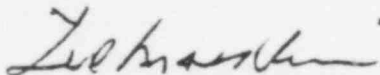
73.37 (d) If it is not possible to avoid heavily populated areas, the Commission may require, depending on individual circumstances of the shipment, additional protective measures.

Comment: If additional protective measures are required for shipment through a heavily populated area, the Commission should allow all similar shipments through the area to be made with the same additional protective measures and not require something different for each individual shipment.

The word "possible" should be changed to "practicable".

We will be pleased to meet with the NRC staff to discuss our comments.

Very truly yours,



Leo Macklin  
Chairman, Subcommittee on Transportation

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\*(Testimony of Roger LeGassie, Deputy Assistant Secretary of Energy Technology, U.S. Department of Energy, before the Senate Subcommittee on Science, Technology and Space, July 19, 1979.)

cc: E. Gordon  
Bertram Wolfe

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