

# Southern Railway System

5G 929-1

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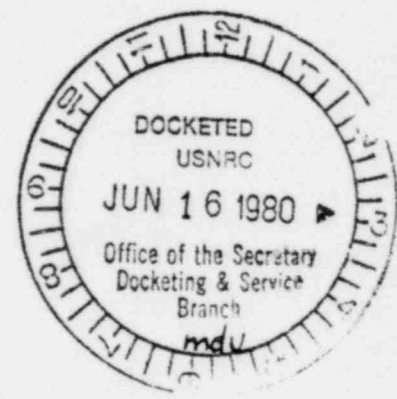
"IN TRIPLICATE"

TICKET NUMBER  
PROPOSED RULE  
PR-70 (4)  
(45 FR 15936)

June 12, 1980  
50486/1 tcb

My Direct Line Is: 383-4428

Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
1717 H Street, NW  
Washington, DC 20555



Re: Proposed Revision of 10 C.F.R. Part 70, Domestic Licensing of Special Nuclear Material; General License Requirements for Any Person Who Possesses Irradiated Special Nuclear Material (SNM) In-Transit, 45 F.R. 15936 (March 12, 1980)

Dear Sir:

Southern Railway Company and its affiliated carriers, which together operate a system of railroad commonly referred to as "Southern Railway System ("Southern")", submit these comments on the captioned proposed rulemaking whereby the Nuclear Regulatory Commission ("NRC") seeks to issue a general license to carriers transporting irradiated reactor fuel. Prudence dictates the filing of these comments since Southern may transport such shipments in the future and would thus be directly affected by this rulemaking.

According to the preamble, the NRC's sole stated reason for imposing the general license is to provide the agency with the legal basis to inspect irradiated reactor fuel shipments during transit. Given the fact that the carriers (according to the NRC's own words) have voluntarily submitted to such inspection for years, this requirement appears to be unneeded. Nonetheless, Southern takes no objection to the general license concept itself providing that it is being imposed solely for the reason stated above.

Southern's primary difficulty with this rulemaking springs from the proposal's ambiguity regarding the requirement the NRC seeks to impose under Section 70.20 a(e) on all general licensees, including carriers: i.e., the requirement under (e)(1) to assure

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that the transportation of any such shipments is in accordance with the applicable physical protection requirements of Section 70.37. Southern's problem is not knowing exactly what the NRC intends by this requirement.

A literal interpretation of (e)(1) would require the carriers themselves to comply with the extensive physical protection requirements which heretofore have been imposed on shippers alone. These requirements include, inter alia, giving advance notification to the NRC of covered shipments, securing prior NRC route approval, use of trained escorts and two-way communication capability between escorts and a designated "roving" remote control center. However, carrier compliance with such requirements would be extremely burdensome, unnecessarily duplicative of shipper responsibilities, and would hold up these shipments in direct contravention of regulations issued by the Materials Transportation Bureau. Surely the NRC could not have intended that result. Railroad common carriers - unlike shippers - are simply not equipped to undertake such responsibilities. If that is what the NRC intended, we submit it has no legal authority to impose such requirements on common carriers.

Another possible interpretation of (e)(1) subparagraph is that the NRC only intends for carriers to satisfy themselves in some unspecified manner that the shippers have in fact complied with the applicable NRC physical protection requirements prior to the railroads' accepting those shipments for transportation, e.g., through a shipper certification to that effect. In Southern's view this interpretation represents the far more reasonable approach, especially since the responsibility of safeguarding such shipments should be borne exclusively by the shippers. However, because carriers cannot unilaterally extract such certifications from shippers, this approach will work only if the Materials Transportation Bureau prescribes a requirement for shippers to certify to carriers that the applicable NRC physical protection requirements have been complied with. This approach provides additional backup assurance of shipper compliance without unduly burdening the railroads' operations or interfering with interstate commerce.

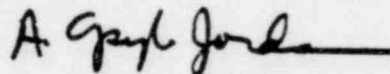
Clarification of the agency's intentions regarding (e)(1) is essential, not only with respect to the carriers' obligations vis-a-vis the NRC but also vis-a-vis the growing number of states seeking to regulate the transportation of radioactive materials. In that regard it should be noted that it is the position of Southern (and the rest of the rail industry for that matter) that states and political subdivisions are preempted from regulating the rail transportation of radioactive materials by virtue of the Federal Railroad Safety Act, the Hazardous Materials Transportation Act, and the Atomic Energy Act.

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In addition, Southern objects to the reporting requirement prescribed by Section 70.20 a(e)(2). That section requires that all general licensees, including carriers, comply with the reporting requirement contained in Section 73.71, which mandates immediate notification to the NRC if any of the material is lost or unaccounted for or if any effort has been made to commit a theft or unlawful diversion of irradiated reactor fuel. A written report is also required within fifteen days. While immediate notification to the NRC would not be unduly burdensome (given the limited number of shipments that rail carriers handle), it would be better if such reports could be made to the Department of Transportation for transmittal to the NRC in accordance with Section V of the Memorandum of Understanding between NRC and DOT. A simple amendment to the MTB's immediate notification rule at 49 CFR §171.15(A) to reflect the NRC's rule (based on knowledge of the facts) would take care of the matter. However, Southern does object to the written report because it would needlessly duplicate the shippers' reports. At a minimum any reports which the carriers are to file should be channeled through the DOT in accordance with 49 CFR §171.16.

In conclusion, Southern asks that the NRC clarify its intentions regarding this proposed rulemaking and carefully consider in its deliberations the points raised requiring DOT/MTB involvement.

Sincerely yours,



A. Gayle Jordan  
General Attorney

cc: Dr. Willard B. Brown  
Acting Chief

Safeguards Standards Branch - I appreciate Southern's being afforded the opportunity of filing these comments for the record in line with the request made by the Association of American Railroads

Mr. Hollis G. Duensing  
Mr. Scott R. Gardner  
Association of American Railroads