

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION AND
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555-0001

October 3, 2002

**NRC REGULATORY ISSUE SUMMARY 2002-18
ISSUANCE OF ORDERS IMPOSING ADDITIONAL PHYSICAL
PROTECTION MEASURES FOR THE TRANSPORTATION
OF SPENT NUCLEAR FUEL GREATER THAN 100 GRAMS**

ADDRESSEES

All U.S. Nuclear Regulatory Commission (NRC) specific power reactor licensees, research and test reactor licensees, independent spent fuel storage installation licensees, and special nuclear material licensees, who possess spent nuclear fuel; and general licensees under 10 CFR 70.20a who transport spent nuclear fuel greater than 100 grams.

INTENT

The NRC is issuing this Regulatory Issue Summary (RIS) to inform addressees of the issuance of Orders to selected licensees requiring implementation of interim compensatory measures (ICMs) concerning the physical protection of shipments of irradiated reactor fuel (i.e., spent nuclear fuel). These physical protection measures are intended to supplement the current physical protection and advance notification requirements in 10 CFR 73.37 and 73.72, during the current threat environment.

BACKGROUND

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the NRC issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. One of those advisories, dated October 12, 2001, outlined specific additional actions to be taken for spent nuclear fuel shipments. The advisory was revised on November 8, 2001, and again on December 13, 2001. An Order was issued to a particular licensee in December 2001, to insure that the supplemental measures would be taken for a particular shipment. All other licensees have voluntarily complied with the additional measures recommended in the current December 13, 2001, advisory (SA-01-02). The NRC has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat

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environment in order to assess the adequacy of security measures at licensed facilities. In addition, the NRC has been conducting a comprehensive review of its safeguards and security programs and requirements.

DISCUSSION

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, via Orders, on all licensees who have informed the NRC they intend to ship spent nuclear fuel in the near future. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees have already initiated many of the measures set forth in this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission has concluded that the security measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the licenses, of those licensees receiving the Order, shall be modified to include the requirements identified in Attachment 2 to the Order.¹ A redacted copy of the Order for 10 CFR Part 50 licensees, without Attachments 1 and 2, is attached. Similar Orders were also issued to certain 10 CFR Part 70 licensees.

The NRC has issued this Order to licensees who are authorized to possess spent nuclear fuel and who ship spent nuclear fuel. The NRC has not issued this Order to licensees who are authorized to possess spent nuclear fuel but are not shipping spent nuclear fuel. However, if a licensee that is authorized to possess spent nuclear fuel subsequently revises its plans and intends to ship spent nuclear fuel in the current threat environment, the NRC will issue an Order to that licensee to implement the ICMs during its shipment of spent nuclear fuel. Licensees are currently required by 10 CFR 73.72 to provide advance notification to the NRC of shipments of spent nuclear fuel.

¹ Attachments 1 and 2 to the Order contain Safeguards Information and will not be released to the public.

Licenses should note that some of the ICMs—which will be required to be in place prior to shipping spent nuclear fuel—may take several months to complete. Consequently, licensees should be aware of the actions that will be required and afford themselves sufficient time to implement the ICMs after receiving Orders and prior to shipping spent nuclear fuel. Therefore, to allow more time for the NRC and licensees to discuss the Orders and ICMs, the NRC requests that licensees, who have not received the Order, consider providing the 10 CFR 73.72 advance notification [to the NRC] earlier than the 10-day minimum period required by the regulations. Licensees can also meet with the NRC staff to discuss their proposed shipment campaigns and implementation of the ICMs separately from any 10 CFR 73.72 advance notification requirements.

Criminal History Checks for Individuals Transporting Spent Nuclear Fuel for Power Reactor Licensees

As required by 10 CFR 73.21(a), each licensee who transports or delivers to a carrier for transport more than 100 grams of irradiated reactor fuel and each person who produces, receives, or acquires Safeguards Information (SGI) shall protect SGI against unauthorized disclosure. For spent nuclear fuel in transit, 10 CFR 73.21(b)(2) requires that SGI that must be protected includes the composite transportation physical security plan, schedules and itineraries for specific shipments, details of vehicle immobilization features, intrusion alarm devices, communications systems, arrangements with and capabilities of local police response forces, locations of safe havens, and procedures for response to safeguards emergencies.

Access to such SGI must be limited, among other things, to employees, agents or contractors of a power reactor licensee to whom the licensee has specifically authorized access after a Federal Bureau of Investigation criminal history check pursuant to 10 CFR 73.21(c) and 73.57. The NRC interprets these requirements to apply to any individual who would need access to SGI in order to transport spent nuclear fuel for a power reactor licensee. Under existing regulations, employees of common carriers involved in the transport of spent nuclear fuel under contract with a power reactor licensee are subject to requirements for a criminal history check and licensee authorization for access to the SGI necessary for their specific spent nuclear fuel transportation work. To make this clear, the Orders to power reactor licensees require, among other things, criminal history checks for those individuals involved in the transportation of the power reactor licensee's spent nuclear fuel.

BACKFIT DISCUSSION

RISs are generally used to communicate with the nuclear industry on a variety of matters for which no response or action is required. This RIS requires no action or written response and, therefore, is not a backfit under 10 CFR 50.109. Therefore, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment was not published in the *Federal Register* because this RIS is informational.

Paperwork Reduction Act Statement

This RIS does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing collection requirements under 10 CFR 73.72 were approved by the Office of Management and Budget (OMB), approval number 3150-0002, which expires April 30, 2005.

Public Protection Notification.

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control Number.

If you have any questions about this RIS, please telephone or email the technical contacts listed below.

/RA/

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/RA/

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Attachments:

1. Redacted Reactor Order
2. List of Recently Issued NRC Regulatory Issue Summaries

SAFEGUARDS INFORMATION
Redacted

ATTACHMENT 1
7590-01-P

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket Nos. ■■■■■■
ALL 10 C.F.R. PART 50 LICENSEES) License Nos. ■■■■■■■■■■
WHO TRANSPORT SPENT NUCLEAR)
FUEL UNDER THE PROVISIONS OF)
10 C.F.R. PART 71) ■■■■■■
)

ORDER MODIFYING LICENSES
(EFFECTIVE IMMEDIATELY)

I.

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the shipment of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Parts 50 and 71. This Order is being issued to all such licensees who ship spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 C.F.R. § 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 C.F.R. § 73.37(b), (c), (d), and (e).

Safeguards Information must be protected from unauthorized disclosure in accordance with Section 147 of the Atomic Energy Act of 1954, as amended, and with 10 CFR 73.21. Violations are subject to Civil or Criminal penalties.

Upon Removal of Enclosures 1 and 2
this Document is DECONTROLLED.

SAFEGUARDS INFORMATION
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II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.² These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect pending

² Attachments 1 and 2 contain SAFEGUARDS Information and will not be released to the public.

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notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 C.F.R. § 2.202, I find that in light of the common defense and security matters identified above which warrant the issuance of this Order, the public health, safety, and interest require that this Order be immediately effective.

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III.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202 and 10 C.F.R. Parts 50 and 71, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by November 2, 2002, unless otherwise specified in Attachment 2, or before the licensee's next shipment, whichever is later.
- B. 1. All Licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

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2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.
- C. 1. All Licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.
2. All Licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.
- D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment has occurred, or the Commission determines that other changes are needed.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 C.F.R. § 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 C.F.R. § 73.21.

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The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV.

In accordance with 10 C.F.R. § 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of continuing

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disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 C.F.R. § 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland, this 3rd day of October 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation