



Midwestern Office

701 East 22nd Street
Suite 110
Lombard, Illinois 60148
Tel: 630.925.1922
Fax: 630.925.1930
E-mail: csgm@csg.org
www.csgmidwest.org

Michael H. McCabe
Regional Director

Lexington
P.O. Box 11910
Lexington, Kentucky 40578
Tel: 859.244.8000

Atlanta
P.O. Box 98129
Atlanta, Georgia 30359
Tel: 404.633.1866

New York
40 Broad Street
Suite 2050
New York, New York 10004
Tel: 212.482.2320

Sacramento
1107 9th Street
Suite 730
Sacramento, California 95814
Tel: 916.553.4423

Washington
444 North Capitol Street, NW
Suite 401
Washington, DC 20001
Tel: 202.624.5460

April 11, 2011

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

Re: Docket NRC-2009-0163

To Whom it May Concern:

On behalf of the Council of State Governments' (CSG) Midwestern Radioactive Materials Transportation Committee, we are writing to submit comments on the Nuclear Regulatory Commission's (NRC) proposed rule on "Physical Protection of Irradiated Reactor Fuel in Transit" (75 FR 62695). Previously, the committee requested an extension of the public comment period to allow us to conduct a thorough evaluation of the proposed changes and their potential impact on state governments.¹ We appreciate the NRC's decision to grant an extension of the comment period for both the proposed rule and the associated guidance document.

The committee includes gubernatorial and legislative appointees from the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. Our comments reflect the input of the committee members; individual Midwestern states may provide additional comments separately.

We appreciate the Commissioners' ongoing commitment to protecting the health and safety of the public as well as to engage stakeholders in the rulemaking process. If you have any questions pertaining to our comments, please contact Lisa Janairo at CSG Midwest at 920.458.5910.

Sincerely,

Paul Schmidt
Co-Chair, CSG Midwestern Radioactive
Materials Transportation Committee

Tim Runyon
Co-Chair, CSG Midwestern Radioactive
Materials Transportation Committee

¹ Letter from Melanie Rasmusson and Paul Schmidt to Secretary, U.S. Nuclear Regulatory Commission (December 16, 2010).

**CSG Midwestern Radioactive Materials Transportation Committee
Comments on 10 CFR Part 73 Proposed Rule (Docket NRC-2009-0163)**

General Comments

The Midwestern states commend the 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.” The states particularly support the inclusion of a new section 73.37(b)(1)(iv), requiring licensees to “preplan and coordinate shipment information with the governor of a State, or the governor’s designee.”

It will be important to give the states and other stakeholders an opportunity to comment on the guidance document after the NRC publishes the final rule.

The footnote explains that “irradiated reactor fuel” and “spent nuclear fuel” are used interchangeably, which is appropriate. The proposed rule, however, also uses the term “spent nuclear material” in two instances (73.37(b)(1)(iv), 73.38(j)(3)). Either these references should be changed to “spent nuclear fuel” or the proposed rule should explain how the term is distinct from the other two terms.

Preplan and Coordinate Spent Nuclear Fuel Shipments

The Midwestern states applaud the new requirement that licensees preplan and coordinate shipments with states. If properly implemented, the new requirement will help to “mitigate ...theft, diversion, or radiological sabotage.” The wording of the actual section, however, does not necessarily “ensure that States have early and substantial involvement in the management of spent nuclear fuel shipments.” An improvement would be to specify in the rule or in the guidance document a timeframe for preplanning and coordination. In addition, it is important that states be involved throughout the “planning, coordination, and implementation of the shipment,” not just “in the initial stages.”

The Midwestern states have some concerns about the requirement for licensees to “document the preplanning and coordination activities” (73.37(b)(1)(vii)). The proposed rule does not adequately convey the type of documentation expected, nor does accompanying guidance document provide sufficient information to help a licensee understand what type of actions are expected and when. The Midwestern states suggest providing examples of what constitutes “acceptable documentation,” including but not limited to timelines for outreach to states (e.g., meetings, teleconferences), summaries of planning meeting discussions, and lists of people contacted.

How do the NRC and its licensees address emergency response coordination for shipments? Is it assumed such coordination already takes place, perhaps through the states? Recognizing that shipment security is the focus of the proposed rule, the Midwestern states consider 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.

Under 73.37(b)(1)(v), licensees will be required to “arrange with local law enforcement authorities...for their response to an emergency or a call for assistance.” It may be beneficial to specify “security-related emergency,” to avoid confusion with other emergencies that would require the assistance of emergency response authorities in the states.

Minimize Intermediate Stops and Delays (A)

The Midwestern states agree with the statement that “The safe and secure shipment of spent nuclear fuel requires coordination and collaboration between various Federal, State, Tribal and local government agencies.” Although not mentioned in the notice (Question 4, “What is the role of State, local, and Tribal governments”), many states also enforce safety regulations and perform inspections for shipments that take place by rail. In fact, the Midwest has been active in the attempt to establish a reciprocal state

inspection program for rail shipments similar to what the Commercial Vehicle Safety Alliance has established for truck shipments. If successful, this effort ultimately could contribute to the goal of minimizing “intermediate stops and delays.” The NRC should, therefore, engage with the states and other federal agencies to establish a reciprocal inspection program for rail shipments.

Arrange for State Law Enforcement Escorts (B)

This new section will require licensees to ensure that armed guards are knowledgeable of “the Federal and State statutes that apply regarding the use of deadly force.” Because state laws differ with regard to private armed guards, it is advisable to expand 73.37(b)(1)(iv) (preplan and coordinate with states) to include a new part E: “Confirm information on State statutes applicable to private armed guards, including the use of deadly force.”

Arrange for Positional Information Sharing When Requested (C)

Under 73.37(b)(1)(iv)(C), licensees would be required to “arrange for positional information sharing when requested.” Does the NRC intend for licensees to use a telemetric position monitoring system that is accessible to the states and the NRC?

Develop Route Information (D)

The Midwestern states agree that the new requirement for licensees to preplan and coordination shipments with states has the potential to “minimize movement of spent nuclear fuel through heavily populated areas.” The states are concerned, however, that the requirement for licensees to “develop route information, including the identification of safe havens” does not sufficiently capture the intent of “minimizing movement...through heavily populated areas.” The accompanying guidance document does not provide any additional information to make it clear that preplanning and coordinating with states on route selection is intended to keep shipments out of heavily populated areas. This purpose should be stated explicitly.

Advance Notifications (73.37(b)(2)(i))

It is understandable why the NRC changed the wording to specify that licensees are required to provide advance notification “prior to the shipment of spent nuclear fuel outside the confines of the licensee’s facility or other place of use or storage...” The revised wording, however, leaves out an important reference to “the transport of spent fuel within or through a state.” As proposed, licensees could interpret this section as requiring notification only to the governor or governor’s designee of the state in which “the licensee’s facility or other place of use or storage” is located. The Midwestern states suggest using the following wording to make it clear that governors or their designees in *all* affected states should be notified: “Prior to the spent nuclear fuel shipment moving through or across the boundary of any State, outside the confines of the licensee’s facility or other place of use or storage, a licensee subject to this section shall provide notification of the spent nuclear fuel shipment to NRC, under 73.72 of this part, and to the governor of the State(s) or the governor’s designee.” For consistency, the same wording should be used in the guidance document.

The Midwestern states request a change to the advance notification provision. Specifically, 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 serve two purposes. First, it would reduce the burden on states that are called upon to engage in shipment-related activities. It is exceedingly difficult for states to schedule inspections and/or escorts on short notice. The challenge increases for rail shipments. With 10 days advance notice, it will be easier for states to make the necessary arrangements. Second, the change would simplify the notification process for licensees by requiring the same timeframe for notifications to the NRC and the states.

Section E addresses the safeguards requirement for “a single shipment whose schedule is not related to the schedule of any subsequent shipment.” “Single shipment” should be defined to avoid confusion. If two shipments in a single shipping campaign were scheduled one year apart, is there any way that section E would apply?

Revisions and Cancellations

It would be beneficial to establish a limit for the number of revisions licensees can issue before a decision is made to cancel the shipment (73.37(b)(2)(iv)). Repeated revisions to the shipping schedule could place unnecessary strains on resources for all the states affected by multiple revisions.

It is important for licensees to issue a cancellation notice to the governor or the governor’s designee (73.37(b)(2)(v)). The requirement should include the words “as soon as possible” or similar language so that licensees will understand the sense of urgency. Cancellation notices must be timely in order to avoid situations in which state resources are committed unnecessarily.

Telemetric Position Monitoring System (73.37(c)(6) and 73.37(d)(4))

How will the NRC “track and actively monitor” shipments that are in transit? Will the NRC have direct access to the same “telemetric position monitoring system” that the licensee uses? Also, the proposed rule should require licensees to use a telemetric position monitoring system for shipments by sea as well as those by road or rail. Shipments of spent fuel might travel by barge on the Great Lakes or rivers in the Midwest; it is important, therefore, for Midwestern state agencies to be able to get accurate information on the location and status of such shipments.

Nevada Petition

The Midwestern states agree with the decision to require the same security measures along the entire route rather than have different requirements for highly populated areas. The change will eliminate the likelihood of “potential areas of vulnerability along the shipment route for theft, diversion, or radiological sabotage.”

Although the Midwestern states understand the NRC’s rationale for not requiring dedicated trains for shipments, such a requirement would enhance shipment security.

Investigations

Section 73.37(f) would require licensees to “immediately conduct an investigation...of any shipment that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification.” The section on advance notification (73.37(b)(2)), however, does not refer to a “designated no-later-than arrival time.” If the “estimated date and time of arrival of the shipment at the destination” in 73.37(b)(2)(iii)(C) is intended to be the “designed no-later-than arrival time,” it should be so stated.

Regulatory Consistency and Certainty

The Midwestern states have some concerns about the lack of consistency between terminology used by the NRC and other agencies like the U.S. Department of Energy (DOE). The Part 73 rulemaking would benefit from federal agencies adopting uniform terminology in connection with safeguards and security. Cooperation among agencies on information designations would also be consistent with President Obama’s Executive Order 13556 on Controlled Unclassified Information.

The activities of the Blue Ribbon Commission on America’s Nuclear Future have called attention to the distinction between NRC-regulated shipments of spent fuel and those conducted by DOE. The Midwestern states are

interested in learning whether the NRC requirements would apply to shipments of spent fuel to regional storage facilities, should the Blue Ribbon Commission recommend the siting of such facilities.

Part 73.72 Notifications

The section on “Requirements for advance notice of shipment of formula quantities of strategic special nuclear material...” appears to be incorrectly labeled in the *Federal Register* notice as 73.71.

Sections 73.72(a)(4) and 73.72(a)(5) include the statement “Classified notifications shall be made by secure telephone.” The draft guidance document, however, refers to “SGI notifications” (p. 16). Page 62702 of the proposed rulemaking states that “The NRC does not regulate classified shipments of spent nuclear fuel.” To avoid confusion, the rule should refer to “SGI notifications,” not “classified notifications.”

The Midwestern states agree with the change to Section 73.72 that exempts a licensee from providing advance notice for a shipment that “does not travel upon or cross a public highway.”