

Rescission Plan for the Orders for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams

BACKGROUND:

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. The terrorist attacks heightened concerns about the use of risk-significant radioactive materials in a malevolent act. After the terrorist attacks, the U.S. Nuclear Regulatory Commission (NRC or the Commission) issued a series of security-related orders to specific licensees. The Commission imposed additional security requirements on the shipment of spent nuclear fuel (SNF) through EA-02-109, "Issuance of Order for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams," (67 FR 63167; October 10, 2002). This Order was issued to NRC power reactor licensees, non-power reactor licensees, independent spent fuel storage installation (ISFSI) licensees, and special nuclear material licensees, who shipped, received, or planned to ship or receive SNF under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 71. Subsequently, the Commission issued similar orders to licensees shipping SNF during the period October 2003 through December 8, 2010. These orders are collectively referred to as the Orders for SNF in Transit or the Orders.

All of the Orders were issued as immediately effective under the NRC's authority to protect the common defense and security 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 § 2.202 and 10 CFR Parts 50, 70, 71, and 72. The security requirements established by the Orders supplemented the existing requirements for the shipment of SNF. These additional security requirements were primarily intended to ensure that SNF was shipped in a manner that protects the common defense and security, and the public health and safety.

DISCUSSION:

On July 21, 2010, the Commission authorized staff to publish a proposed rule to establish security requirements for SNF in transit. The proposed rule, “10 CFR 73.37, “Physical Protection of Irradiated Fuel in Transit”,” (RIN 3150-AI64, Docket ID: NRC-2009-0163), was published in the *Federal Register* on October 13, 2010 (75 FR 62695). The proposed rule incorporated the security requirements in the Orders as well as lessons learned from implementation of the Orders. Once the final rule is in effect, it will establish the performance standards and objectives for the protection of SNF shipments from theft, diversion, or radiological sabotage. Since the requirements in the rule will capture and make generically applicable the security requirements in the Orders, the staff will recommend that the Orders for SNF in Transit be rescinded. The security requirements in the Orders will remain in effect until licensees are notified in writing that the Orders are rescinded.

The staff is taking the following steps to implement rescission of the Orders for SNF in Transit if the Commission approves the final rule:

Step 1: Evaluation: During the development of the final rule, the staff developed a crosswalk¹ comparing the security requirements in the Orders for SNF in Transit and the security requirements contained in the final rule. The staff verified that all the security requirements in the Orders were incorporated into the final rule. In addition, the associated guidance document, NUREG-0561, Physical Protection of Shipments of Irradiated Reactor Fuel, Rev. 2, provides clarifying information relative to implementation of the requirements in the rule. The crosswalk is protected as “Official Use Only – Security Related Information,” and is

¹ The Office of Nuclear Security and Incident Response developed a comparison between the security orders for SNF in transit and the final rule provisions for the Physical Protection of Irradiated Fuel in Transit. This crosswalk was reviewed by the Office of the General Counsel. The purpose of the crosswalk is to ensure that the requirements in the orders are captured in the final rule, thus providing the basis for rescinding the orders.

available at Agencywide Document Access and Management Systems (ADAMS) Accession No. ML113350146.

Step 2: Establish Rescission Date: Based upon the information developed in the crosswalk, the final rule incorporates the security requirements in the Orders for SNF in Transit. Therefore, the Commission plans to take measures some time after the publication date of the rule to rescind the Orders.

Step 3: Notice to Affected Parties: During the 90-day period between the publication of the final rule and the effective date, the NRC offices that issued the Orders (the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS)) will publish a joint *Federal Register* notice to licensees informing them of the rescission of the Orders. The Offices of NRR and NMSS will also send letters to NRC power reactor licensees, non-power reactor licensees, special nuclear material licensees and ISFSI licensees informing them of the rescission of the Orders for SNF in Transit. In addition, information relative to the rescission will be placed on the NRC Web site and in ADAMS.