

Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 10, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 14th day of May 2004.

For the Nuclear Regulatory Commission.

**John Stang,**

*Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–11508 Filed 5–20–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113]

### Global Nuclear Fuel—Americas, LLC, Environmental Assessment and Finding of No Significant Impact Related to Proposed Exemption From Fissile Classification and Fissile Material Package Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Finding of no significant impact and environmental assessment.

#### FOR FURTHER INFORMATION CONTACT:

Kevin M. Ramsey, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555–0001, telephone (301) 415–7887 and e-mail [kmmr@nrc.gov](mailto:kmmr@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM–1097 to allow a one-time exemption from fissile material classification and the fissile material package requirements in 10 CFR 71.55 and the standards for arrays of fissile material packages in 10 CFR 71.59 for the shipment of certain radioactive waste materials by Global Nuclear Fuel—Americas, LLC (GNF or licensee) to a disposal facility and to impose license conditions on the shipment. The NRC has prepared an Environmental Assessment (EA) in support of this action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

##### II. Environmental Assessment

###### Background

GNF is authorized under NRC Materials License SNM–1097 to manufacture nuclear reactor fuel utilizing special nuclear material (SNM), specifically low-enriched uranium. During operation, GNF has

accumulated a large amount of noncombustible materials contaminated with small amounts of fissile material (legacy materials). The legacy materials include piping, equipment parts, ceiling tiles, and concrete blocks. GNF believes that it will difficult and burdensome to demonstrate that this material meets the present regulatory requirements in 10 CFR 71.53 for exemption from fissile material classification and from the fissile material package standards of 10 CFR 71.55 and 71.59.

On January 26, 2004, NRC published a final rule amending its regulations in 10 CFR Part 71 on packaging and transporting radioactive material, “Compatibility with IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments,” (69 FR 3698; January 26, 2004). The final rule, in part, makes changes in fissile material exemption requirements to address the unintended economic impacts of NRC's emergency final rule, “Fissile Material Shipments and Exemptions,” (62 FR 5907; February 10, 1997). In particular, the revised requirements for exemption from classification as fissile material (placed in revised 10 CFR 71.15) provide greater flexibility to licensees shipping radioactive material than is provided in 10 CFR 71.53. The effective date of the final rule is October 1, 2004.

On April 19, 2004, GNF requested permission to use the revised fissile material exemption in 10 CFR 71.15(c) prior to October 1, 2004. Use of this revised requirement would allow GNF to ship approximately 800 containers of legacy materials without these legacy materials being classified as fissile materials and without needing to comply with the fissile material packaging requirements of 10 CFR 71.55 and 71.59. Because GNF wants to make this shipment before the effective date of the amended part 71 final rule, the provisions of amended 10 CFR 71.15 are unavailable to GNF. However, under the provisions of 10 CFR 71.8, NRC may grant an exemption from the requirements of the regulations in part 71 that it determines is authorized by law and will not endanger life or property nor the common defense and security. Accordingly, NRC is considering issuing an exemption to GNF from fissile material classification and from the fissile material packaging requirements of 10 CFR 71.55 and 71.59, together with conditions that would be placed in the license to govern this one-time shipment of approximately 800 containers of legacy materials. The purpose of this document is to assess the environmental consequences of the

proposed exemption and proposed license conditions.

#### *Review Scope*

The purpose of this EA is to assess the environmental impacts of issuing a license amendment to GNF which grants an exemption from fissile classification and from 10 CFR 71.55 and 71.59 and imposes conditions on the shipment of approximately 800 containers of legacy materials. It does not approve issuance of the license amendment. This assessment will determine whether to issue a FONSI or to prepare an EIS. Should NRC issue a FONSI, no EIS will be prepared.

#### *Proposed Action*

The proposed action is to amend NRC Materials License SNM-1097 to exempt the licensee from fissile material classification and from fissile material package standards in 10 CFR 71.55 and 71.59 for a one-time shipment of approximately 800 containers of legacy materials and to impose the following conditions on this shipment:

Fissile material meeting the following requirements is exempt from classification as fissile material and from the fissile material package standards of 10 CFR 71.55 and 71.59, but is subject to all other requirements of 10 CFR Part 71:

(1) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

(i) There is at least 2000 grams of solid nonfissile material for every gram of fissile material, and

(ii) There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(2) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the required mass of solid nonfissile material.

These conditions are required to provide reasonable assurance that the material will not pose an unsafe criticality hazard during transport.

#### *Purpose and Need for Proposed Action*

GNF is currently manufacturing nuclear reactor fuel at its Wilmington, NC facility. It is requesting the license amendment to facilitate the transport and subsequent disposal of approximately 800 containers of legacy materials stored at the site. The licensee has a contract with a disposal site that will expire before October 1, 2004. In order to ship these materials under its existing contract, it must obtain an exemption from fissile material

classification and from the fissile material package requirements for this shipment.

#### *Alternatives*

The alternatives available to NRC are:

1. Approve the license amendment as above-described;
2. No action (*i.e.*, deny issuance of the license amendment)

#### *Affected Environment*

The affected environment for the proposed action would be the immediate vicinity of the vehicle used to transport the material.

The affected environment for no action is the GNF site. A full description of the site and its characteristics is given in the 1997 EA for the renewal of Special Nuclear Material License No. SNM-1097 (NRC, May 1997). The GNF facility is located on a site of about 1664 acres in New Hanover County, North Carolina, approximately 6 miles north of the city of Wilmington.

#### *Environmental Impacts of Proposed Action*

The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG-0170 (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20 requirement of 100 mrem for a member of the public. The proposed action would result in additional shipments. Additional shipments would expose more members of the public to radiation, increase nonradiological truck emissions, and increase the risk of injuries from traffic accidents. However, the increases would be so small that the differences would be negligible.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose rate may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a

motor vehicle. The proposed action would not cause dose rates to the driver exceeding the DOT limit.

The possibility of a criticality accident due to transportation of this material was evaluated during the development of the new rule containing the fissile material classification exemption, the substance of which is to be incorporated into the license as a condition for the one-time shipment planned by GNF. The results of the evaluation are documented in NUREG/CR-5342, "Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR part 71" (NRC, 1998). The evaluation concluded that the mass limits in the exemptions could be safely increased to provide greater flexibility to licensees shipping radioactive material. In addition, an EA was prepared and a FONSI was published in Section VIII of the final rule amending 10 CFR part 71 (NRC, January 2004). The EA explicitly considered the potential environmental impacts of the revised fissile material exemptions.

Under the proposed action, the doses to the public and to the workers are not increased beyond those considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). Therefore, shipment of these materials as proposed would be consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

The NRC has determined that the approval of the proposed amendment will not have a significant impact on effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

#### *Environmental Impacts of No Action Alternative*

Denying this amendment request would result in the continued storage of a large amount of contaminated material on the licensee's site. Although the risk of a release is low, the risk would remain. In addition, the material poses an ever-increasing financial liability because disposal must still be accomplished before the facility can be decommissioned and released for unrestricted use.

The occupational health impacts would not change significantly as a result of denial of this amendment request. Occupational doses at the

facility may be slightly higher as a result of the need to continue surveillance and maintenance activities; however, the facility will continue to implement NRC-approved, radiation safety procedures for handling radioactive materials. Thus, the dose to workers under the no action alternative will remain within acceptable regulatory limits.

The NRC has determined that denial of the proposed amendment will not have a significant impact on effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the GNF site.

Based on its review, the NRC has concluded that the environmental impacts associated with the proposed action are insignificant and, therefore, do not warrant denial of the proposed license amendment. The NRC has determined that the proposed action, approval of the license amendment as described, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the proposed license amendment, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

#### *Agencies and Persons Contacted*

On May 6, 2004, the NRC staff provided the draft EA and FONSI to staff from the North Carolina Department of Environmental and Natural Resources (DENR). On May 7, 2004, the DENR Radiation Protection Section responded that it had no comments.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effects on historical properties because it is administrative in nature. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

The NRC staff has determined that the proposed action is not a type of activity that has potential to effect threatened or endangered species, or critical habitat because it is administrative in nature. Therefore, no consultation is required under Section 7 of the Endangered Species Act.

#### *References*

U.S. Nuclear Regulatory Commission (NRC), December 1977, NUREG-0170, "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," Accession No. ML022590265.

U.S. Nuclear Regulatory Commission (NRC), February 10, 1997, "Fissile Material

Shipments and Exemptions," Emergency Final Rule, 10 CFR Part 71, 62 FR 5907.

U.S. Nuclear Regulatory Commission (NRC), May 1997, "Environmental Assessment for Renewal of Special Nuclear Material License SNM-1097," Legacy Accession No. 9705080142.

U.S. Nuclear Regulatory Commission (NRC), July 1998, NUREG/CR-5342, "Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR Part 71."

U.S. Nuclear Regulatory Commission (NRC), January 26, 2004, "Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments," Final Rule, 10 CFR Part 71, 69 FR 3698.

Global Nuclear Fuel—Americas LLC (GNFA), April 19, 2004, "Exemption Request," ADAMS No. ML041190402.

### **III. Final Finding of No Significant Impact**

Pursuant to 10 CFR part 51, the NRC has considered the environmental consequences of amending NRC Materials License SNM-1097 to exempt GNF from fissile material classification and from the fissile material package requirements in 10 CFR 71.55 and 71.59 for a one-time shipment of approximately 800 containers of legacy materials and to impose license conditions on the shipment. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an EIS is not warranted.

### **IV. Further Information**

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O-1F21, 11555 Rockville Pike, Rockville, Maryland. In addition, documents related to this proposed action will be available electronically for public inspection from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems accessing documents in ADAMS, should contact the PDR reference staff at (800) 397-4209 or (301) 415-4737, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 14th day of May 2004.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04-11510 Filed 5-20-04; 8:45 am]

BILLING CODE 7590-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49711; File No. S7-24-89]

**Joint Industry Plan; Order Granting Approval of Amendment No. 13A of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.**

May 14, 2004.

### **I. Introduction**

On October 31, 2003, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to as "Participants"), as members of the operating committee ("Operating Committee" or "Committee")<sup>1</sup> of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan ("Amendment 13A")<sup>2</sup> pursuant to Rule 11Aa3-2<sup>3</sup> and Rule 11Aa3-1<sup>4</sup> under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal reflects several changes unanimously adopted by the Committee.<sup>5</sup> Amendment 13A was

<sup>1</sup> The Committee is made up of all the Participants.

<sup>2</sup> The Commission notes that CSE recently changed its name to National Stock Exchange. However, a Plan amendment that would change the name of CSE to National Stock Exchange for Plan purposes has not been submitted to the Commission. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR-CSE-2003-12).

<sup>3</sup> 17 CFR 240.11Aa3-2.

<sup>4</sup> 17 CFR 240.11Aa3-1.

<sup>5</sup> CSE was chair of the Operating Committee at the time the 13A Amendment was filed with the Commission. Subsequently, PCX and its subsidiary

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