

From: "Morris, Vicki (MORRISVR)" <MORRISVR@UCMAIL.UC.EDU>
To: "phl@nrc.gov" <phl@nrc.gov>
Date: 10/16/02 9:28AM
Subject: RE: Concerns with NRC compatibility category for 10 CFR 71.10 (b) and (c)

I have had no response from this email. Is there a problem?

Vicki

> -----Original Message-----

> From: Morris, Vicki (MORRISVR)
> Sent: Wednesday, September 04, 2002 1:26 PM
> To: 'phl@nrc.gov'
> Cc: 'jll2@nrc.gov'; 'jmp1@nrc.gov'; 'dms4@nrc.gov';
> 'bsinclair@utah.gov'; 'tdevine@crcpd.org'; 'Howard, Marcia (ODH)';
> 'Suppes, Roger'; Andrews, John (ANDREJS); Talaska, Glenn (TALASKGG);
> 'Swanson, Dan'
> Subject: Concerns with NRC compatibility category for 10 CFR 71.10
> (b) and (c)

>

> My name is Vicki Morris and I am the RSO at the University of Cincinnati.
> Last November I became concerned with a rule that had recently been
> implemented by the Ohio Department of Health. The rule essentially
> incorporated 10 CFR 71 into Ohio rule format. During the rule
> implementation process the equivalent to 10 CFR 71.10 (b) and (c) were
> removed from the Ohio rule. It was the removal of these parts of 10 CFR 71
> that raised concern. Deleting the equivalent to 10 CFR 71.10 (b) and (c)
> from the rule significantly changed how licensees must handle "low risk
> shipments" of radioactive materials. Discussions and correspondences with
> the Ohio Department of Health indicated that the equivalent to 10 CFR 71
> (b) and (c) was deleted from the Ohio rule at the request of the NRC and
> was due to the fact that the NRC had recently changed the compatibility
> category for 10 CFR 71.10 (b) and (c) from "B" to "NRC". Since November I
> have had multiple conversations with Ohio Department of Health personnel,
> along with recent conversations with Terry Devine of the CRCPD and Jim
> Lynch of NRC Region III. The conclusion and advice I received indicates
> the change in compatibility category was possibly in error and my
> perception of the effect was not what the NRC intended. Your name was
> provided as the contact who could most effectively have the concern
> investigated and make any applicable changes to the compatibility
> category. (Note: I have copied this email to several individuals
> recommended to me at the NRC. In addition I have copied this email to
> individuals at CRCPD, OAS, ODH and here at UC to keep them informed of
> action taken to try and resolve an issue that affects them.)

>

> Effect of the Change

> 10 CFR 71, as stated in 10 CFR 71.0, applies to all shipments of
> radioactive material by licensees outside the licensee's property. 10 CFR
> 71.10 (b) and (c) consists of exemptions from the majority of the
> regulations listed in 10 CFR 71 for "lower risk shipments" (e.g., type A
> or less quantity, selected LSA or SCO shipments, less than 20 Ci of Am and
> Pu). The exemptions in 10 CFR 71.10 (b) and (c) release licensees from all
> parts of 10 CFR 71.10 except that part which requires a licensee to follow
> DOT regulations (i.e., 10 CFR 71.5) and that part which restricts air
> shipments of Pu (i.e., 10 CFR 71.88). By eliminating the exemptions listed
> in 10 CFR 71.10 (b) and (c) the effect is that all parts of the regulation

> (i.e., all of 10 CFR 71) now applies to all shipments of radioactive
> material, including "low risk shipments". Requirements added by the change
> include having all packaging approved by the NRC, respective agreement
> state or be generally licensed as delineated in the regulation and having
> a NRC or agreement state approved quality assurance program, as described
> in 10 CFR 71 subpart H.

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> NRC Compatibility Category Reasoning

> As stated in the compatibility category tables, the exemption listed in 10
> CFR 71(b) and (c) is "reserved to the NRC because it is designed to
> delineate NRC's authority from the DOT's in the area of transportation of
> radioactive materials. These provisions relinquish to DOT the control of
> types of shipments that are of low risk both from radiation and
> criticality standpoints. Further, to ensure that only low criticality risk
> shipments are included in the area of DOT authority, these provisions
> restrict the exemption to Type A and low-specific-activity (LSA) or
> surface contaminated (SCOs) that either contain no fissile material or
> satisfy the fissile material exemption requirements in (part) 71.53.
> Finally, this exemption is reserved to the NRC because it does not relieve
> licensees from DOT requirements by reason of NRC's authority, nor does the
> exemption relieve licensees from the restrictions on air transportation of
> plutonium imposed by Congress. Thus, Agreement States should not adopt
> these provisions in order to retain their ability to implement all of 49
> CFR as directed by DOT".

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> At least in my opinion, the reasoning does not explain the results. It is
> not clear that the exemptions delineate NRC's authority from the DOT's in
> the area of transportation nor that with the exemptions the NRC
> relinquishes to DOT the control of "low risk shipments". The exemptions,
> as I understand them, only release a licensee from the extra requirements
> listed in 10 CFR 71 and from experience I know that the NRC uses the
> regulations in 10 CFR 71 (i.e., those listed in 10 CFR 71.5) to cite
> licensees for failure to follow DOT regulations for "low risk shipments".
> By deleting the exemptions licensees are still not relieved from DOT
> requirements and are still not relieved from the restrictions on air
> transportation of Pu.

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> I request/recommend the NRC reevaluate the current compatibility assigned
> to 10 CFR 71 (b) and (c) and seriously consider either changing it back to
> compatibility B or possibly to compatibility C.

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> I hope this email adequately and clearly expresses my concerns and the
> effect of the NRC's change in compatibility category for 10 CFR 71(b) and
> (c). From experience I know the effect of the change is hard to
> comprehend, especially for those of us who are use to the exemption being
> present. For many it takes several readings of the entire regulation, with
> 10 CFR 71(b) and (c) deleted, for the overall effect of the deletion to be
> understood. If you have any questions do not hesitate to call.

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