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

August 14, 2008

NRC REGULATORY ISSUE SUMMARY 2008-18
INFORMATION ON REQUESTS FOR EXTENDING USE OF EXPIRING TRANSPORTATION PACKAGES

ADDRESSEES

Users of, or certificate holders for, transportation packages that expire on October 1, 2008, specifically:

(a) Type B packages, that the U.S. Nuclear Regulatory Commission (NRC) has previously approved, but not designated as B(U), B(M), B(U)F, or B(M)F in the identification number of the NRC Certificate of Compliance, or Type AF transportation packages, that NRC approved before September 6, 1983; or

(b) Existing Type B packagings, constructed to U.S. Department of Transportation (DOT) Specification 6M, 20WC, or 21WC, conforming in all aspects to the requirements of 49 CFR Subchapter C, in effect on October 1, 2003, or existing fissile material packagings constructed to DOT Specification 6L, 6M, or 1A2, conforming in all aspects to the requirements of 49 CFR Subchapter C, in effect on October 1, 2003.

INTENT

Sections 71.19(a) and 71.20 of 10 *Code of Federal Regulations* (CFR) Part 71 expire on October 1, 2008. Section 71.19(a) authorizes the use of Type B transportation packages, previously approved by NRC, but not designated as B(U), B(M), B(U)F, or B(M)F in the identification number on the NRC Certificate of Compliance or Type AF transportation packages approved by NRC, before September 6, 1983. Section 71.20 authorizes use of DOT specification containers for fissile material or for a Type B quantity of radioactive material, as specified in DOT regulations at 49 CFR Parts 173 and 178. NRC is issuing this regulatory issue summary (RIS) to inform addressees regarding information that will be considered in requests for extending use of these packages beyond October 1, 2008.

BACKGROUND INFORMATION

On January 26, 2004, NRC published a final rule in the *Federal Register* (69 FR 3698), amending its transportation regulations in Part 71, to be compatible with the latest version of the International Atomic Energy Agency (IAEA) "Regulations for the Safe Transport of

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Radioactive Material" (IAEA Safety Standards Series No. TS-R-1). NRC coordinated this rulemaking with DOT, since NRC and DOT jointly regulate the safety of radioactive material in transport. In this rulemaking, NRC and DOT implemented a planned phaseout of the Type B and fissile material transportation packages described above. The phaseout is to be completed by October 1, 2008 (when the regulations authorizing use of these packages expire). Certain licensees have indicated that they may need to make shipments in these packages after the October 1, 2008, expiration date.

SUMMARY OF ISSUE

NRC regulations for packaging and transportation of radioactive materials are contained in Part 71. These regulations are amended from time to time, to harmonize them with periodic revisions to IAEA regulations, which are used internationally. Grandfathering provisions, such as 10 CFR 71.19(a) and 71.20, have historically been included both in NRC and IAEA regulations. The grandfathering provisions allow continued use, with some conditions, of transportation packages approved to previous editions of the regulations. The purpose of the grandfathering provisions is to minimize cost and impact on implementing the changes to the regulations.

In the January 2004 rulemaking, NRC adopted revised regulations in Part 71, to harmonize with the 1996 edition of the IAEA regulations (TS-R-1), which no longer authorized the use of the Type B and fissile material transportation packages described above. Among other changes, the 10 CFR 71.19(a) and 10 CFR 71.20 grandfathering provisions were adopted to allow continued use of these Type B and fissile material transportation packages until October 1, 2008.

Certain licensees and certificate holders have indicated that there may be instances where limited use of these packages may be needed beyond the October 1, 2008, expiration date. This RIS is intended to provide information to licensees and certificate holders in requesting authorization for such limited use.

REQUESTED INFORMATION

Requests for limited use of these packages after the October 1, 2008, expiration date must address all five elements listed below. NRC will consider these requests on a case-by-case basis. Applicants should note that these requests will not be considered a form of certificate renewal, either under 10 CFR 71.38 or any other NRC regulation.

Licensees or certificate holders who have identified the need to use these packages should provide the following information to NRC and DOT, before the October 1, 2008, expiration date:

(1) Package Information. NRC Certificate of Compliance Number or DOT Specification Number.

(2) Identification of Shipments. (a) Number of shipments; (b) number of packages per shipment; (c) packaging serial numbers; (d) package contents; (e) end use of the radioactive material; (f) shipment origin and destination; (g) mode; (h) general timeframe (e.g., first quarter 2009); and (i) date last shipment will be completed.

(3) Reasons for Requesting Extended Use. Justification for extending the use of expiring packages must describe why acquiring replacement packages is not practical and why

shipments cannot be made before the October 1, 2008, expiration date. The justification must demonstrate that: (a) there are no alternative domestically approved packages available; (b) the contents cannot be reconfigured such that transport can be conducted in accordance with the regulations; and (c) the transport schedule cannot be adjusted so as to be conducted in accordance with the regulations. The justification must also describe any good-faith efforts to acquire replacement packages that meet the current package performance requirements, including a detailed description of past activities and the current status of acquiring replacement packages. In addition, any adverse impacts that will result if the shipment is not conducted should be fully described.

(4) Safety Justification for Continued Use and Proposed Compensatory Measures. Since the expiring package designs may lack safety enhancements included in newer designs, the request must include a safety justification for continued use and a description of compensatory measures that will be used to provide an equivalent level of safety. Examples of compensatory measures that may be considered are: (a) special package inspections, tests, or determinations that ensure that the packaging is in unimpaired physical condition; (b) transport by exclusive use; (c) transport during time of low road usage; and (d) accompaniment of shipment by escort equipped to effect a recovery in an emergency situation or in case of a transportation accident.

(5) A Plan and Schedule to Acquire Replacement Packages or Complete Necessary Shipments. Details about the planned acquisition of replacement packages must be provided, along with key milestones, and proposed implementation dates, unless the licensee can show why acquiring a replacement package is not practical and why shipments cannot be made before the October 1, 2008, expiration date.

Filing Requests for Extension

Requests to extend use of these packages should be sent to NRC, with a copy sent separately to DOT (applications to DOT should be in accordance with 49 CFR 107.105). The requests should be addressed as follows:

ATTN: Document Control Desk
Director, Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

ATTN: Special Permits, PHH-31
Associate Administrator for Hazardous Material Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

BACKFIT DISCUSSION

This RIS outlines information that licensees should consider for incorporation in voluntary submittals for extending the use of the subject transportation packages. The identified information will assist the NRC in the regulatory process and aides licensees in developing thorough submittals. Any requests to extend the use of the subject transportation packages are proposed by licensees and are therefore not backfits. Further, this RIS requires no action or written response and therefore is not a backfit. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational and pertains to a staff position that does not represent a departure from current regulatory status and practice. This RIS is being published in the *Federal Register* for information.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule, as designated by the Congressional Review Act (5 U.S.C. §§ 801-808) and, therefore, is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This Regulatory Issue Summary contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). These information collections were approved by the Office of Management and Budget, approval number 3150-0008.

PUBLIC PROTECTION NOTIFICATION

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a request for information collection.

CONTACT

This RIS requires no specific action or written response. If you have any questions about this summary, please contact the individual listed below.

/RA/

E. William Brach, Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material
Safety and Safeguards

Contact: Nancy L. Osgood, NMSS/SFST
(301) 492-3326
E-mail: Nancy.Osgood@nrc.gov

Note: A complete listing of recent NRC generic communications may be found on the NRC's public Web site http://www.nrc.gov under the link to: Electronic Reading Room>Document Collections.

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OFC	SFST		SFST		SFST		SFST		SFST		OGC			
NAME	NOsgood		MDeBose		EKraus		EBenner		NMamish		BJones			
DATE	7/22/08		7/29/08		7/16/08		7/29/08		7/30/08		7/24/08			
OFC	OIS		NMSS		SFST		SFST							
NAME	TDonnell		AWong		WBrach		WBrach							
DATE	8/04/08		08/05/08		08/07/08		8/14/08		/ /08		/ /08			

C=Without attachment/enclosure E=With attachment/enclosure N=No copy **OFFICIAL RECORD COPY**