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RECORD #195

TITLE: Transport License Condition - Radiography License

FICHE:



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

AUG 24 1978

Not in HPP

MEMORANDUM FOR: G. H. Bidinger, Division of Fuel Facilities and  
Materials Safety Inspection, IE

FROM: James Lieberman  
Office of the Executive Legal Director

SUBJECT: TRANSPORT LICENSE CONDITION - RADIOGRAPHY LICENSES

This memorandum responds to your request for guidance as to the intent of the following standard license condition:

The licensee may transport licensed material or deliver licensed material to a carrier for transport, in accordance with the provisions of Section 71.5, Title 10, Code of Federal Regulations, Part 71, "Packaging of Radioactive Material for Transport."

(S) The general intent of the license condition is to emphasize to the licensee that transport of licensed materials is subject to applicable Department of Transportation (DOT) regulations pertaining to packaging, labelling, marking, and like matters. Moreover, the condition should not be read to exempt licensees from compliance with other regulations under Part 71 or other NRC regulations. The following paragraphs should help to explain some facets of the regulatory scheme under Part 71.

Part 71, including §71.5, was amended in 1972 with the intent to bring within the scope of DOT regulations shipments by AEC licensees not then subject to DOT jurisdiction. Therefore, DOT's packaging and labelling requirements would be imposed in all future cases, either under DOT or AEC authority. See Notice of Proposed Rulemaking, 36 Fed. Reg. 6521 (1971); Statement of Consideration, 37 Fed. Reg. 3985 (1972); Transportation of Radioactive Materials, Memorandum of Understanding, 38 Fed. Reg. 8466 (1973). Prior to promulgation of the 1972 Amendments, AEC imposed the DOT standards through license conditions. Under the 1972 revisions, the DOT regulations apply to all transport of licensed materials by carrier or outside the confines of the licensee's plant or place of use of licensed materials. 10 CFR 71.2.

The requirements of Part 71 are in addition to, not in substitution for, other requirements related to packaging and transport, 10 CFR 71.1(b), and the regulations of Part 71 apply to each person authorized by specific license to receive, possess, use or transfer licensed materials. Therefore, the required compliance with DOT regulations imposed on licensees in 10 CFR 71.5 is not exclusive; compliance with other portions of Part 71 and any other applicable regulations is also required.

10 CFR 71.3 requires licensees who transport or deliver licensed materials to a carrier for transport to hold a general or specific license issued by NRC, unless exempted from such requirements under Part 71. Exemptions are listed in 10 CFR 71.6 - 71.9. The exemption in 10 CFR 71.10 has expired.

10 CFR 71.11 grants a general license to deliver licensed material to a carrier for transport, without compliance with the package standards of Subpart C of Part 71, for shipments within the limits set by 10 CFR 71.11. Under 10 CFR 71.12, a general license is issued for shipments delivered to a carrier in DOT-specification containers, or in NMSS approved packages, or in packages approved by a foreign government meeting International Atomic Energy Agency requirements.

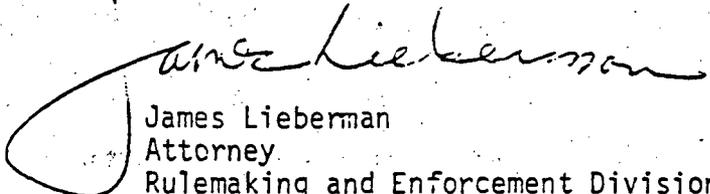
If a licensee cannot qualify for an exemption or general license, a specific license is required. An application for a specific license under Part 71 may be made in the application for a license under other parts of 10 CFR or as an amendment to such license. As stated in 10 CFR 71.21, the necessary contents for a specific license for transport of licensed materials include:

- a package description, as required in 10 CFR 71.22;
- a package evaluation, as required in 10 CFR 71.23;
- a description of proposed procedural controls, as required in 10 CFR 71.24; and,
- in case of fissile material, an identification of the proposed fissile class.

Private carriage is permissible; however, such carriage is subject to DOT and NRC regulations as described above.

10 CFR 71.5 requires compliance with regulations of DOT in 49 CFR Parts 170-189, 14 CFR Part 103, 46 CFR Part 146 and of the U. S. Postal Service in 39 CFR Parts 14-15. However, regulations in 14 CFR Part 103 and 39 CFR Parts 14-15 have been withdrawn or removed and consolidated under DOT regulations in 49 CFR Parts 170-189.

In conclusion, the license condition gives the licensee notice of required compliance with DOT regulations under 10 CFR 71.5, particularly for the benefit of licensees who themselves intend to transport their own licensed material, but in no sense is the licensee excused from compliance with other provisions of Part 71 and other applicable regulations. Consideration might be given to restating the condition to more clearly indicate that the licensee must comply with all applicable regulations in addition to §71.5. The licensee would then certainly be aware of his obligations under §71.5, the primary purpose of the license condition, as well as recognize the applicability of other pertinent regulations.



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