

**From:** Horn, Merri  
**Sent:** Wednesday, January 19, 2011 6:46 AM  
**To:** Rulemaking Comments  
**Subject:** FW: Add'l DOE comment: General Comment: Physical Protection of Byproduct Material - NRC Proposed Rule

Comments on Part 37

DOCKETED  
USNRC

January 19, 2011 (10:15 am)

**From:** May, Melanie [mailto:Melanie.May@hq.doe.gov]

**Sent:** Tuesday, January 18, 2011 7:01 PM

**To:** Horn, Merri

**Cc:** Wangler, Mike

**Subject:** Add'l DOE comment: General Comment: Physical Protection of Byproduct Material - NRC Proposed Rule

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Merri,

DOE provides the following additional comment in regards to 10 CFR Parts 30, 32, 33, et.al, "Physical Protection of Byproduct Material- Proposed Rule". It is being submitted separately because it addresses more than one set of regulations.

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GENERAL COMMENT: Synchronization of DOT and NRC Requirements should be addressed. The NRC rulemaking does not discuss the connection between the NRC and DOT requirements on security and physical protection. Without any additional action on the part of NRC and DOT, this rulemaking appears to regulate carriers even if only for security purposes. The proposed rule will require NRC licensees to choose carriers that meet the NRC requirements for physical protection of large quantities of radioactive material. This situation could violate the separation of responsibilities that the two organizations have and will, at a minimum, create confusion among carriers.

PROPOSED RESOLUTION: A potential solution to this conflict is found in 49 CFR 173.22 (c), which reads as follows:  
“(c) Prior to each shipment of fissile radioactive materials, and Type B or highway route controlled quantity packages of radioactive materials (see §173.403), the shipper shall notify the consignee of the dates of shipment and expected arrival. The shipper shall also notify each consignee of any special loading/unloading instructions prior to his first shipment. [Highlighting for emphasis] For any shipment of irradiated reactor fuel, the shipper shall provide physical protection in compliance with a plan established under:  
(1) Requirements prescribed by the U.S. Nuclear Regulatory Commission, or  
(2) Equivalent requirements approved by the Associate Administrator.”

The DOT and NRC should work together on this issue and could revise this paragraph as follows:  
“(c) Prior to each shipment of fissile radioactive materials, and Type B or highway route controlled quantity packages of radioactive materials (see §173.403), the shipper shall notify the consignee of the dates of shipment and expected arrival. The shipper shall also notify each consignee of any special loading/unloading instructions prior to his first shipment. For any shipment of Category 1 or Category 2 quantity of radioactive material or irradiated reactor fuel, the shipper shall provide physical protection in compliance with a plan established under:  
(1) Requirements prescribed by the U.S. Nuclear Regulatory Commission, or  
(2) Equivalent requirements approved by the Associate Administrator.”

We recommend the proposed change to the DOT regulations concurrent with the NRC final rule.  
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Thank-you,

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