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NUCLEAR REGULATORY COMMISSION
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ALL AGREEMENT STATES, VERMONT, WYOMING

APPLICABILITY OF U.S. DEPARTMENT OF TRANSPORTATION (DOT) REQUIREMENTS IN TITLE 49 OF THE *CODE OF FEDERAL REGULATIONS* TO CLASS 7 (RADIOACTIVE) MATERIAL TRANSPORT, AND WHEN TO REQUEST AN EXEMPTION FROM 10 CFR 71.5(b) (STC-18-037)

Purpose: This letter has two purposes:

- It explains how the U.S. Department of Transportation (DOT) regulations in Title 49 of the *Code of Federal Regulations* (CFR) are incorporated into U.S. Nuclear Regulatory Commission's (NRC's) transportation regulations in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," and how they apply to Agreement States.
- It informs the Agreement State programs that NRC and Agreement State licensees are required to follow the standards and requirements of the DOT regulations in 49 CFR applicable to Class 7 (radioactive) material transport. These requirements apply even for shipments not covered by DOT regulations, unless the licensee requests an exemption from 10 CFR 71.5(b) or the Agreement State's equivalent regulation.

For the purposes of this discussion, "licensed material" and "Class 7 (radioactive) material" may be used interchangeably.

Background: During an inspection, a State university that is also an Agreement State licensee informed an Agreement State inspector that the university did not need to comply with the DOT regulations for transport of Class 7 (radioactive) materials because the university transported the material itself on public roads in State-owned vehicles. The university referenced 49 CFR 171.1(d)(5), which specifies some functions and activities that are not subject to the DOT regulations. The licensee concluded that the DOT regulations do not apply when transporting a hazardous material in a conveyance by a Federal, State, or local government employee solely for non-commercial purposes, since the shipment is not considered to be "in commerce." The NRC is providing clarification.

Discussion: The purpose of 10 CFR 71.5(a) is to ensure that NRC licensees transporting licensed material comply with the applicable DOT regulations, including those regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport (e.g., requirements for the use of proper packaging, labeling, and marking).

The purpose of 10 CFR 71.5(b) is to impose, by NRC authority, pertinent DOT requirements for shipments of Class 7 (radioactive) material by NRC licensees even when those shipments do not enter commerce and are, therefore, not subject to the DOT regulations. The NRC regulation in 10 CFR 71.5(b) is designated as Compatibility Category B; therefore, Agreement State programs must adopt and implement essentially identical transportation regulations. As summarized in the enclosed analysis, the regulatory jurisdiction and any related enforcement action for radioactive material shipments resides with the NRC (under 10 CFR 71.5(b)) or with the Agreement State Program (under equivalent Agreement State regulations), not with DOT.

Although a licensee may not be required to follow the DOT regulations per 49 CFR 171.1(d)(5) because a shipment does not enter commerce, NRC and Agreement State licensees are nevertheless required to follow transportation regulations per 10 CFR 71.5(b) or equivalent Agreement State regulation. The NRC and Agreement State licensees shall conform to the applicable DOT regulations unless the licensee requests an exemption from 10 CFR 71.5(b) or equivalent Agreement State regulation. Such a request is made to the NRC or the respective Agreement State program.

If you have any questions regarding this correspondence, please contact your Regional State Agreements Officer, or the point of contact named below:

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Enclosure:
Detailed Explanation

SUBJECT: APPLICABILITY OF U.S. DEPARTMENT OF TRANSPORTATION (DOT) REQUIREMENTS IN TITLE 49 OF THE *CODE OF FEDERAL REGULATIONS* TO CLASS 7 (RADIOACTIVE) MATERIAL TRANSPORT, AND WHEN TO REQUEST AN EXEMPTION FROM 10 CFR 71.5(b) (STC-18-037)

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Detailed Explanation – Applicability of U.S. Department of Transportation Requirements to Class 7 (Radioactive) Material Transport, and When to Request an Exemption from 10 CFR 71.5(b)

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 71.5, “Transportation of licensed material,” is specifically designed to address the joint regulatory structure of the U.S. Nuclear Regulatory Commission (NRC) and U.S. Department of Transportation (DOT). It also provides consistent and equivalent standards governing the safety of Class 7 (radioactive) material in transport. Specifically, 10 CFR 71.5 encompasses the NRC’s expectations for the transportation of Class 7 (radioactive) material and compliance with both NRC and DOT regulations.

10 CFR 71.5(a)

This paragraph provides directions to the NRC licensees transporting Class 7 (radioactive) material to ensure compliance with the applicable DOT regulations, including those regulations in 49 CFR Parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport (e.g., requirements for the use of proper packaging, labeling, and marking).

10 CFR 71.5(b)

This paragraph indicates, in part, that if the DOT regulations do not apply to a shipment of Class 7 (radioactive) material (e.g., 49 CFR 171.1(d)), the licensee shall follow the standards and requirements of the DOT regulations as specified in 10 CFR 71.5(a) to the same extent as if the shipment were subject to the DOT regulations. The NRC licensees who transport licensed material shall comply with the applicable DOT regulations, unless the licensee requests an exemption.

Commerce

The DOT’s jurisdiction has generally focused on the shipments of Class 7 (radioactive) material that are considered to be “in commerce.” There are instances where a Class 7 (radioactive) material shipment does not enter commerce. For example, a State university may transport Class 7 (radioactive) material to other buildings on and off-campus, and the Class 7 (radioactive) material may not enter commerce. However, 10 CFR 71.5(b) or the equivalent Agreement State regulation, would still require an NRC and/or Agreement State licensee to comply with the standards and requirements of the DOT regulations for that Class 7 (radioactive) material shipment even though it may not enter commerce.

Purpose of 10 CFR 71.5(b)

In the early 1970s, the Atomic Energy Commission (AEC), the precursor to the NRC, recognized there may be some shipments of radioactive material that would not be required to meet applicable safety requirements because it did not enter commerce and, therefore, were outside of the DOT’s jurisdiction. To remedy this potential gap and ensure uniform applicability of relevant safety requirements, in 1972, the AEC issued 10 CFR 71.5(b). This new requirement imposed applicable DOT requirements such as packaging, marking, and labeling on licensees shipping Class 7 (radioactive) materials, even when the licensee was not subject to the DOT regulations [60 FR 50253 (September 28, 1995)]. The regulatory authority for shipments under 10 CFR 71.5(b) resides with the NRC, and not the DOT.

Enclosure

Compatibility Category

The NRC regulation in 10 CFR 71.5 is designated as Compatibility Category B, indicating that this program element (e.g., regulation) has significant cross-jurisdictional implications. The Agreement State program element must be essentially identical to that of the NRC.

Agreement State Regulations

An Agreement State licensee is subject to the equivalent 10 CFR Part 71 regulations that the Agreement State program has adopted. As required by an Agreement State program's equivalent regulation to 10 CFR 71.5(b), Agreement State licensees are required to follow the standards and requirements in the appropriate DOT regulations in 49 CFR applicable to Class 7 (radioactive) material transport, unless the licensee requests an exemption from the Agreement State's equivalent regulation to 10 CFR 71.5(b).

Summary

The purpose of 10 CFR 71.5(b) is to impose, by NRC authority, the pertinent DOT requirements for shipments of licensed Class 7 (radioactive) material by the NRC licensees (and subsequently the Agreement State licensees) even when those shipments do not enter commerce and are, therefore, not subject to the DOT regulations. The NRC regulation in 10 CFR 71.5(b) is designated as Compatibility Category B, therefore the Agreement State programs must adopt essentially identical transportation regulations and implement them. As summarized here, the regulatory jurisdiction and any related enforcement action for radioactive material shipments resides with the NRC (under 10 CFR 71.5(b)) and with the Agreement State program (under equivalent Agreement State regulations), not with DOT.

Even though a licensee may not be required to follow the DOT regulations per 49 CFR 171.1(d)(5) because the material does not enter commerce, licensees are nevertheless required to follow the applicable DOT transportation requirements per 10 CFR 71.5(b). The NRC and Agreement State licensees are required to conform to the DOT regulations (e.g., requirements for the use of proper packaging, labeling, and marking) unless the licensee requests an exemption from 10 CFR 71.5(b) (or equivalent Agreement State regulation). Such a request is made to the NRC or the respective Agreement State program.