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

CONSENT CALENDAR ITEM

August 10, 1979

SECY-79-479

For: The Commissioners

From: William J. Dircks, Director
Office of Nuclear Material Safety and Safeguards

Thru: Executive Director for Operations *for LUC*

Subject: AMENDMENT OF 10 CFR PART 71

Purpose: To recommend that the Commission issue changes to 10 CFR Part 71, as an effective rule, requiring shipments of radioactive materials by NRC licensees to be in accordance with Department of Transportation (DOT) regulations.

Discussion: Recently there have been a number of transportation incidents involving the shipment of low specific activity and type A quantities of radioactive materials to waste burial sites. The cause of these incidents has generally been the use of defective packages or improper preparation of packages before delivery to a carrier for transport. The Governors of the three states in which commercial burial grounds are located have expressed concern over the increasing number of transportation incidents involving waste materials coming to the burial grounds. They have asked DOT and NRC to take corrective actions.

The staff has discussed this problem with the staff of the DOT. Both DOT and NRC staff agree that corrective measures are needed. Since the basic cause of the incidents can often be attributed to activities by NRC and Agreement State licensees, the staff believes it is appropriate for the Commission to take steps that will further assure that these shipments are made in accordance with Federal safety regulations.

Enclosure 1 contains the comparative revised text of certain portions of 10 CFR Part 71. The revised text would require all shipments of radioactive materials by NRC licensees (other than shipments subject to Postal Regulations) to be in accordance with DOT regulations. At present, 10 CFR §71.5(c) exempts NRC licensees from meeting DOT regulations if they are otherwise

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subject to those regulations. By deleting this exemption, the revised text would permit the NRC to inspect licensee activities in this area and to take enforcement actions if warranted. Both DOT and NRC staff agree that it is desirable to augment the inspection and enforcement efforts of DOT with those of the NRC and that this will contribute to safety. The effect of the amendments will be to further assure that Federal safety regulations are observed. No new requirements are included in the amendments.

In view of the importance from the standpoint of the public health and safety of assuring that NRC licensees are in compliance with Federal regulations applicable to the packaging and shipment of radioactive material, the staff believes that there is immediate need to increase the level of its inspection and enforcement activities in this area, that the change to 10 CFR 71 relates primarily to matters of Commission practice and procedures, and therefore, good cause exists for omitting notice of proposed rulemaking and public procedure thereon as contrary to the public interest. The amendments would become effective thirty (30) days after publication in the Federal Register.

The proposed amendment would only impact the staffing requirements of the Office of Inspection and Enforcement. An additional ten (10) man-years/year would be required to include the additional inspection requirements of the proposed amendment into the regular inspection procedure for Nuclear Regulatory Commission licensees.

Enclosure 2 is the Federal Register Notice containing the statement of considerations and the proposed changes to 10 CFR Part 71.

Recommendation:

That the Commission approve issuance of the changes to 10 CFR Part 71 contained in Enclosure 2 as an effective rule.

Note:

1. A news release on the rule change will be issued (Enclosure 3).
2. Appropriate Congressional Committees will be notified of this action.
3. Since the amendment is administrative in nature in that it imposes no new requirements, it has been determined that an Environmental Impact Statement is not necessary.
4. Affected licensees and other interested persons will be notified of this action by direct mail.
5. This action may not be in accordance with the memorandum of understanding between DOT and NRC, however, DOT has agreed to this action.

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Coordination:

The Offices of Standards Development and Inspection and Enforcement concur in the recommendations in this paper. The Office of the Executive Legal Director has no legal objection.



William J. Dircks, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Revisions to 10 CFR Part 71
2. Statement of Considerations
3. News Release

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, August 24, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT August 17, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of September 3, 1979. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners
Commission Staff Offices
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ENCLOSURE 1

PROPOSED REVISIONS TO TEXT OF 10 CFR PART 71

§71.1 Purpose.

(a) This part establishes requirements for transportation and for preparation for shipment of licensed material and prescribes procedures and standards for approval by the Nuclear Regulatory Commission of packaging and shipping procedures for [~~fissile material (uranium-233; uranium-235; plutonium-238; plutonium-239 and plutonium-241) and for quantities of~~]* licensed materials [~~in excess of type-A quantities; as defined in §71.4(q);~~] and prescribes certain requirements governing such packaging and shipping.

Comment: This change indicates the expanded purpose of 10 CFR 71.

§71.5 Transportation of licensed material.

(a) No licensee shall transport any licensed material outside the confines of his plant or other place of use, or deliver any licensed material to a carrier for transport, unless the licensee complies with the applicable requirements of the regulations appropriate to the mode of transport, of the Department of Transportation in 49 CFR Parts 170-189[~~; 14 CFR Part 103 and 46 CFR Part 146;~~] and the U.S. Postal Service in 39 CFR Parts 14 and 15 insofar as such regulations relate to the packaging of byproduct, source, or special nuclear material, marking and labeling of the packages, loading and storage of packages,

*[~~abc--~~] indicates deletions from text.

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placarding of the transportation vehicle, monitoring requirements and accident reporting.

Comment: This is an editorial change; DOT has consolidated the requirements formerly in 14 CFR Part 103 and 46 CFR Part 146 into 49 CFR Parts 170-189.

§71.5(c)

Paragraph (a) of this section shall not apply to the transportation of licensed material, or to the delivery of licensed material to a carrier for transport, where such transportation is subject to the regulations of the [~~Department-of-Transportation-or-the~~]* U.S. Postal Service.

Comment: This removes the provisions in 10 CFR 71 which exempt NRC licensees from shipping in accordance with DOT regulations.

§71.7 Exemption for [~~no-more-than-type-A~~] certain** quantities

(a) A licensee is exempt from all the requirements of this part to the extent that he delivers to a carrier for transport[~~:--(a)~~] packages each of which contains no licensed material having a specific activity in excess of 0.002 microcurie/gram[~~;-or~~].

(b) Except for the requirements specified in §71.5, a licensee is exempt from all the requirements in this part to the extent he delivers to a carrier for transport packages [Shipments] subject to the regulations of the Department of Transportation in 49 CFR Parts 170-189[~~;-14-CFR-Part-103;-or-46-CFR-Part-146~~] or the U.S. Postal Service in 39 CFR Parts 14 and 15, [of-packages] each of which

*[~~abc--~~] indicates deletions from text.

**abc, indicates additions to text.

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contains no more than a type A quantity of radioactive material, as defined in §71.4(q), which may include one of the following:

Comment: This change to §71.7(b) makes the new requirement in §71.5 (for shipment to be in accordance with DOT regulations) applicable to shipment of type A quantities by NRC licensees. The exemption in §71.7(a) for specific activity less than 0.002 microcurie/gram remains in effect.

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 71

PACKAGING OF RADIOACTIVE MATERIAL FOR TRANSPORT AND

TRANSPORTATION OF RADIOACTIVE MATERIAL

UNDER CERTAIN CONDITIONS

Shipment in Accordance with Department of Transportation Regulations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Effective rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations for packaging and transportation of radioactive material. The amendments would require all shipments of radioactive materials made by NRC licensees, other than shipments subject to the regulations of the U.S. Postal Service, to be made in accordance with the regulations of the U.S. Department of Transportation.

EFFECTIVE DATE: _____

FOR FURTHER INFORMATION CONTACT: _____

SUPPLEMENTARY INFORMATION: An increased number of shipments are being made each year of low specific activity materials and of type A quantities of radioactive materials. This trend is expected to continue in the future. Recently, there has also been a growing number of incidents

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involving the shipment of these materials. The basic cause of many transportation incidents can be attributed to the use of defective shipping containers or to improper loading and preparation of packages for shipment. After consulting with the U.S. Department of Transportation, the U.S. Nuclear Regulatory Commission has determined that there is a need to further assure that these shipments are being conducted in accordance with Federal regulations. Therefore, the NRC is amending 10 CFR Part 71 to require that all shipments of licensed material, except those shipments subject to the regulations of the U.S. Postal Service, be made in accordance with the regulations of the U.S. Department of Transportation. This change to the regulations which will not alter any substantive requirements will permit the NRC to inspect the activities of its licensees in this area and to take enforcement actions if warranted.

The Department of Transportation lacks sufficient staff to perform the number of inspections necessary to assure that their regulations are being observed with respect to packaging and shipment of radioactive materials. The Nuclear Regulatory Commission has overlapping authority with the Department of Transportation to regulate the transportation of radioactive materials. Because of the numerous transportation incidents that have occurred involving low specific activity and type A quantities of radioactive materials, a need exists for additional inspection and enforcement efforts to more fully assure that these shipments are made in accordance with Federal regulations. Augmenting the inspection and enforcement efforts of the Department of Transportation with those of the Nuclear Regulatory Commission will further assure that applicable Federal regulations are observed with respect to packaging and shipment of low

specific activity and type A quantities of radioactive materials. In view of the foregoing and of the importance from the standpoint of the public health and safety of assuring that NRC licensees are in compliance with Federal regulations applicable to the packaging and shipment of radioactive material, the Commission has found that there is immediate need to increase the level of its inspection and enforcement activities in this area, that this change relates primarily to matters of Commission practice and procedures, and therefore, good cause exists for omitting notice of proposed rulemaking and public procedure thereon as contrary to the public interest. The amendments will become effective thirty (30) days after publication in the Federal Register.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 71, is published as a document subject to codification.

1. In §71.1, paragraph (a) is revised to read as follows:

§71.1 Purpose

(a) This part establishes requirements for transportation and for preparation for shipment of licensed material and prescribes procedures and standards for approval by the Nuclear Regulatory Commission of packaging and shipping procedures for licensed materials and prescribes certain requirements governing such packaging and shipping.

* * * * *

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2. In §71.5, paragraphs (a) and (c) are revised to read as follows:

§71.5 Transportation of licensed material

(a) No licensee shall transport any licensed material outside of the confines of his plant or other place of use, or deliver any licensed material to a carrier for transport, unless the licensee complies with the applicable requirements to the regulations appropriate to the mode of transport, of the Department of Transportation in 49 CFR Parts 170-189, and the U.S. Postal Service in 39 CFR Parts 14 and 15 insofar as such regulations relate to the packaging of byproduct, source, or special nuclear material, marking and labeling of the packages, loading and storage of packages, placarding of the transportation vehicle, monitoring requirements and accident reporting.

* * * * *

(c) Paragraph (a) of this section shall not apply to the transportation of licensed material, or to the delivery of licensed material to a carrier for transport, where such transportation is subject to the regulations of the U.S. Postal Service.

3. In §71.7, paragraph (a) and the prefatory language of paragraph (b) are revised to read as follows:

§71.7 Exemption for certain quantities

(a) A licensee is exempt from all the requirements of this part to the extent that he delivers to a carrier for transport packages each of which contains no licensed material having a specific activity in excess of 0.002 microcurie/gram.

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(b) Except for the requirements specified in § 15, a licensee is exempt from all the requirements of this part to the extent he delivers to a carrier for transport packages subject to the regulations of the Department of Transportation in 49 CFR Parts 170-189 or the U.S. Postal Service in 39 CFR Parts 14 and 15, each of which contains no more than a Type A Quantity of radioactive material, as defined in § 71.4(q), which may include one of the following:

* * * * *

(Secs. 53, 63, 81, 161, b, i, o, Pub. L. 83-703, 68 Stat. 930, 933, 935, 948, as amended (42 U.S.C. 2073, 2093, 2111, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).)

Dated at _____ this _____ day
of _____ 1979.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk
Secretary of the Commission

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ENCLOSURE 3 (NEWS RELEASE)

TO FOLLOW

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