

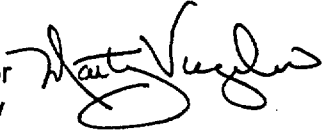


UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 23, 1999

MEMORANDUM TO: Frederick C. Combs, Deputy Director
Office of State Programs

FROM: Martin J. Virgilio, Deputy Director 
Office of Nuclear Material Safety
and Safeguards

SUBJECT: ADOPTION OF TRANSPORTATION REGULATIONS BY
AGREEMENT STATES

I am responding to your memorandum to Stuart A. Treby and myself, dated November 10, 1999, in which you requested comment on the policy issue of whether Agreement State compatibility with Part 71 should be required. Elimination of Part 71 compatibility appears to be feasible, but additional information on the Agreement State adoption of U.S. Department of Transportation (DOT) regulations and Agreement State inspection/enforcement of transportation activities would need to be developed to support a decision.

Our review of the Part 71 rule chart attached to your memorandum indicates that many sections are either already reserved to NRC, not required for compatibility (and therefore are not delegated to the states), or require the states to adopt essentially the same, but not identical, requirement. In fact, requiring Part 71 compatibility seems to run the risk of creating conflicts by the introduction of new state regulations, and imposes the costly burden on the states of conducting rulemakings and maintaining regulations with little potential or no benefit. Moreover, we are unaware of significant Agreement State interest in developing transportation regulations.

With respect to transportation, the Federal regulatory safety role is shared with the DOT. DOT regulations apply to the transportation hazardous materials in commerce in all states. It appears that the overall DOT regulatory system as structured provides for uniformity and consistency in the transportation area on a nationwide level without the need for states to adopt further regulations.

An important consideration in eliminating Part 71 compatibility is the level of inspection/enforcement against DOT regulations. Inspection/enforcement by DOT itself is quite limited. In response to this situation, NRC requires its licensees to comply with DOT regulations, and provides inspection/enforcement against DOT regulations. It is our understanding that Agreement States also have adopted DOT regulations in their programs, but we cannot confirm this is true in all states, nor do we know whether the implementation of DOT regulations is consistent among states. Also, the extent to which states inspect/enforce against DOT regulations, and the impetus for such inspections, is not clear and needs further analysis.

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We recommend that the Office of State Programs initiate, with DOT and Agreement State participation, an effort to further investigate the elimination of the requirement for Agreement State compatibility with Part 71. Specifically, we believe that determination of the transportation safety performance of Agreement State licensees and Agreement State inspection/enforcement history in the transportation area would be a key objective for this effort. Perhaps the Council of Radiation Control Program Directors could serve as focal point to develop the needed information on state transportation inspection/enforcement programs and activities.

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A:\agreement.wpd

*see previous concurrence

OFC:	*SFPO	*SFPO	*DD:SFPO	*D:SFPO	DD:NMSS	
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TICKET

DATE RECEIVED: 11/18/99 ORIGINAL DUE DT: 11/23/99 CONTROL NO: 199900609
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TIME: : COMP DT: / /

Fred Combs
OSP

TO:
Virgilio

FOR SIGNATURE OF : ** BLUE ** SECY NO:

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SFPO

DESC: ROUTING:

THE ADOPTION OF TRANSPORTATION REGULATIONS BY
AGREEMENT STATES

Kane
Virgilio
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Poland

SPECIAL INSTRUCTIONS OR REMARKS:

→ response to
F. Combs, OSP

cc: Virgilio
Poland
Eng
Beach

SPENT FUEL PROJECT OFFICE ACTION	
DATE ASSIGNED:	11/19
ASSIGNED TO:	Eng Cook
DUE SFPO:	11/22 12/9
DUE NMSS:	11/23 12/10
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COMMENTS:	
cc:	Jensen/Poland/Virgilio