

March 29, 2001

ALL AGREEMENT AND NON-AGREEMENT STATES

PROGRAM MANAGEMENT INFORMATION: ADOPTION OF CERTAIN TRANSPORTATION REGULATIONS BY REFERENCE (STP-01-029)

Several States have asked whether adopting appropriate sections of 49 CFR and 10 CFR 71, by reference, would allow them to maintain compatibility with respect to transportation regulations.

We were also asked, by Mr. Steven Collins from the Illinois Department of Nuclear Safety, to provide a list of transportation requirements in 10 CFR Part 71 which are not also addressed in 49 CFR Parts 170 - 189. This would help to avoid duplication of requirements when adopting transportation regulations by reference. Enclosed is our response to Mr. Collins advising him that adoption by reference is acceptable and providing the requested list.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT:	Lloyd A. Bolling	INTERNET: LAB@NRC.GOV
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/RA/

Janet R. Schlueter, Acting Deputy Director
Office of State and Tribal Programs

Enclosure:
As stated

STP-01-029

March 29, 2001

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STP-A-4

March 27, 2001

Mr. Steven C. Collins
Assistant Manager
Office of Radiation Safety
Illinois Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

Dear Mr. Collins:

This is in response to your February 7, 2001, letter on adopting the appropriate sections of 49 CFR by reference.

We believe that the Illinois Department of Nuclear Safety can adopt 49 CFR Parts 170 - 189 by reference, along with the appropriate sections of 10 CFR Part 71 that are not specifically included in 49 CFR, in order to maintain compatibility. We have enclosed the 10 CFR Part 71 portion of the Office of State and Tribal Programs Procedure SA-200, entitled, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements" issued on February 6, 2001. This complete procedure is located at the Office of State and Tribal Programs website, listed under "Procedures." The sections of 10 CFR Part 71 that are not specifically included in 49 CFR Parts 170 - 189 are identified by an asterisk in this enclosure. Please note that some of these sections are identified as Compatibility Category D.

Please feel free to contact me or Lloyd Bolling at 301-415-2327 should you have any further questions.

Sincerely,

/RA by Janet R. Schlueter Acting for/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
Compatibility List - Current Part 71

Current Part 71 - PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL From SA-200 dated 2/6/01

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
§71.0	Purpose and Scope	D	
§71.1	Communications and Records	D	
§71.2	Interpretations	D	
§71.3.	Requirements for license	D	
§71.4	Definitions		
	A ₁	B	
	A ₂	B	
	Carrier	B	
	Certificate holder	D	This term is not used in any section requiring Agreement State adoption.
	Close reflection by water	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term then the definition should be essentially identical.
	Containment System	D	This term is not used in any section requiring Agreement State adoption.
	Conveyance	D	This term is not used in any section requiring Agreement State adoption.
	Exclusive use	B	
	Fissile material	B	
	Licensed material	[D]	This definition also appears in 10 CFR 20.1003. For purposes of compatibility, the language of the Part 20 definition should be used and is assigned to Compatibility Category D.
	Low Specific Activity (LSA) material	B	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
	Low toxicity alpha emitters	B	
	*Maximum normal operating pressure	B	The definition of the term “maximum normal operating pressure” was changed from a compatibility category “B” to a category “D.” This term is not used in any section requiring Agreement State adoption; it relates to the heat conditions in §71.71(c)(1), which is designated a category “NRC.” This definition is not required for compatibility since it defines a term which pertains to an area reserved to the NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it is and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define this term then the definition should be essentially identical.
	Natural thorium	B	
	Normal form radioactive material	B	
	*Optimum interspersed hydrogenous moderation	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term then the definition should be essentially identical.
	Package	B	
	Fissile material package	B	
	Type B package	B	
	Packaging	B	
	Special form radioactive material	B	
	Specific activity	B	
	*State	D	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
	Surface Contaminated Object (SCO)	B	
	Transport Index	B	
	Type A quantity	B	
	Type B quantity	B	
	Natural Uranium	B	
	Depleted Uranium	B	
	Enriched Uranium	B	
*§71.5	Transportation of Licensed Material	B	
*§71.6	Information collection requirements: OMB approval	D	
*§71.7	Completeness and accuracy of Information	D	
*§71.8	Specific exemptions	D	
*§71.9	Exemption for physicians	D	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
§71.10	Exemptions for low level material	<p>B- paragraphs (a)</p> <p>NRC- paragraphs (b) & (c)</p>	<p>Paragraph (a) is retained as a category B because of its significant transboundary implications associated with the definition of “radioactive material” in the U.S. Department of Transportation regulations. DOT’s regulation at 49 CFR §173.403, “Definitions,” provides that radioactive material means any material having a specific activity greater than 70 Bq per gram (0.002 microcurie per gram); thus, materials with a specific activity less than this amount would be shipped without being considered as radioactive material. For consistency in this area, the exemption in paragraph (a) of section 71.10 reflects DOT’s definition of radioactive material and provides the basis for the exemption of materials with a specific activity less than 0.002 $\mu\text{Ci/g}$.</p> <p>Paragraphs (b) and (c) were changed from a compatibility category “B” to a category “NRC.” This exemption is reserved to the NRC because it was designed to delineate NRC’s authority from that of DOT’s in the area of transportation of radioactive materials. These provisions relinquish to DOT the control of types of shipments that are of low risk both from radiation and criticality standpoints. Further, to ensure that only low criticality risk shipments are included in the area of DOT authority, these provisions restrict the exemption to Type A and low-specific-activity (LSA) or surface contaminated (SCOs) that either contain no fissile material or satisfy the fissile material exemption requirements in §71.53. Finally, this exemption is reserved to the NRC because it does not relieve licensees from DOT requirements by reason of NRC’s authority, nor does the exemption relieve licensees from the restrictions on air transportation of plutonium imposed by Congress. Thus, Agreement States should not adopt these provisions in order to retain their ability to implement all of 49 CFR as directed by DOT.</p>
§71.11	Deliberate misconduct	C	
*§71.12	General license: NRC-approved package	B	
*§71.13	Previously approved package	B- paragraphs (a) & (b) NRC- paragraphs (c) & (d)	Paragraphs (c) and (d) address transportation package approvals areas reserved to the NRC
*§71.14	General license: DOT specification container material	B	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
*§71.16	General license: Use of foreign approved package	B	
§71.18	General license: Fissile material, limited quantity of package	D	This provision is not required for purposes of compatibility because the transportation of these packages in Agreement States is already covered under existing Department of Transportation (DOT) regulations.
§71.20	General license: Fissile material, limited moderator per package	D	This provision is not required for purposes of compatibility because the transportation of these packages in Agreement States is already covered under existing (DOT) regulations.
§71.22	General license: Fissile material, limited quantity, Controlled Shipment	D	This provision is not required for purposes of compatibility because the transportation of these packages in Agreement States is already covered under existing (DOT) regulations.
§71.24	General license: Fissile material, limited moderator, controlled shipment	NRC	
§71.31	Contents of Application	NRC	
§71.33.	Package description	NRC	
§71.35	Package evaluation	NRC	
§71.37	Quality Assurance	NRC	
§71.38	Renewal of a certificate of compliance or quality assurance program approval	NRC	
§71.39	Requirements for additional information	NRC	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
§71.41	Demonstration of Compliance	NRC	
§71.43	General Standards for all packages	NRC	
§71.45	Lifting and tie-down Standards for all packages	NRC	
§71.47	External radiation Standards for all packages	[B]	This requirement was changed from a compatibility category “NRC” to “[B].” This provision was changed because it establishes the external radiation standards for all transportation packages. It is essential that the Agreement States adopt this provision in an essentially identical manner because they have direct and significant transboundary affects. The bracket, indicates that a State should adopt this provision in an essentially identical manner because of its direct and significant transboundary effects; however, if a State has adopted this provision as a part of its DOT regulations, then the adoption of this section is not necessary.
§71.51	Additional Requirements for Type B packages	NRC	
§71.52	Exemption for low-specific-activity (LSA) packages	NRC	
§71.53	Fissile material exemptions	NRC	
§71.55	General Requirements for fissile material packages	NRC	
§71.57	Reserved		

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
§71.59	Standards for arrays of fissile material packages	NRC	
§71.61	Special requirements for irradiated nuclear fuel shipments	NRC	
§71.63	Special requirements for plutonium shipments	NRC	
§71.64	Special requirements for plutonium air shipments	NRC	
§71.65	Additional Requirements	NRC	
§71.71	Normal conditions of transport	NRC	
§71.73	Hypothetical accident conditions	NRC	
§71.74	Accident conditions for air transport of plutonium	NRC	
§71.75	Qualification of special form radioactive material	NRC	
§71.77	Qualification of LSA-III material	NRC	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
*§71.81	Applicability of operating controls	D	This requirement was changed from a compatibility category “B” to “D.” This designation was changed because it does not meet any of the criteria for designation as Category A, B, C or Health and Safety and is not required for the purposes of compatibility.
*§71.83	Assumptions as to unknown properties	[B]	This requirement was changed from a compatibility category “NRC” to “[B].” Agreement States can regulate fissile material below 350gms. This provision is needed to address fissile material regulated by the States and to assure a regulatory gap in the regulations of these materials is not created. The bracket, indicates that a State should adopt this provision in an essentially identical manner because of its direct and significant transboundary effects; however, if a State has adopted this provision as a part of its DOT regulations, then the adoption of this section is not necessary.
*§71.85	Preliminary determinations	B	
§71.87	Routine determinations	B	
§71.88	Air Transportation of plutonium	B	
*§71.89	Opening instructions	B	
*§71.91	Records	D	
*§71.93.	Inspection and tests	D	
*§71.95	Reports	D	
*§71.97	Advance notification of shipment of irradiated reactor fuel and nuclear waste	B	
*§71.99	Violations	D	
*§71.100	Criminal penalties	D	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
*§71.101	Quality assurance requirements	D	
*§71.103	Quality assurance organization	D	
*§71.105	Quality assurance program	D	
*§71.107	Package design control	D	
*§71.109	Procurement document control	D	
*§71.111	Instructions, procedures, and drawings	D	
*§71.113	Document control	D	
*§71.115	Control of purchased material, equipment, and services	D	
*§71.117	Identification and control of materials, parts, and components	D	
*§71.119	Control of special processes	D	
*§71.121	Internal Inspection	D	
*§71.123	Test control	D	
*§71.125	Control of measuring and test equipment	D	

REGULATION SECTION	SECTION TITLE	COMPATIBILITY CATEGORY	COMMENTS
*§71.127	Handling, storage, and shipping control	D	
*§71.129	Inspection, test, and operating status	D	
*§71.131	Nonconforming materials, parts, or components	D	
*§71.133	Corrective action	D	
*§71.135	Quality assurance records	D	
*§71.137	Audits	D	
Appendix A	Determination of A1 and A2	B	