



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

MAR 12 2014

Mr. Mark B. Hawk  
Hazardous Materials Consultant  
49 Palisades Parkway  
Oak Ridge, TN 37830

Reference No. 13-0217

Dear Mr. Hawk:

This is in response to your November 12, 2013, and November 21, 2013 e-mails asking when the free drop test prescribed in § 173.465(c)(2) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) is required for packages containing Type A, fissile Class 7 (radioactive) material. We have paraphrased your questions and answered them in the order you provided.

- Q1. Is my understanding correct that the free drop test prescribed in § 173.465(c)(2) is required for Class 7 fissile materials that are subject to the Nuclear Regulatory Commission's (NRC's) 10 CFR Part 71, Packaging and Transportation of Radioactive Material, Subpart C, General Licenses? Also, is my understanding correct that 10 CFR Part 71 states a Type A package prescribed in § 173.417(a) is required for Class 7 fissile material?
- A1. Your understanding is incorrect. Section 173.465(c)(2) states all materials that meet the definition of a fissile material in § 173.403 must be placed in a packaging intended to contain Type A fissile material. In addition, this packaging must be capable of successfully withstanding a free drop test from a height of 0.3 m (1 foot) on each corner, or in the case of cylindrical packages, onto each of the quarters of each rim, and then must demonstrate that it is capable of successfully withstanding the free drop test prescribed in § 173.465(c)(1). The NRC is the federal agency authorized to interpret the requirements prescribed in 10 CFR Part 71. To obtain a clarification on these regulations, you may wish to contact the NRC's Office of Public Affairs, 11555 Rockville Pike, Rockville, MD 20852, (301) 415-8200.
- Q2. Is my understanding correct that no other fissile Class 7 materials subject to Department of Transportation (DOT) regulations other than Type A are required to comply with the free drop test for Type A packagings prescribed in § 173.465(c)(2)?
- A2. Your understanding is correct. Under the 1979 Memorandum of Understanding between the DOT and the NRC (that can be downloaded from this website location: <http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Hazmat/moun>

rcdot.pdf), DOT has the primary responsibility for regulating Type A quantities of Class 7 materials and their packagings. The HMR require that a Type A inner packaging must satisfy the requirements of the free drop test specified in § 173.465(c) and the initial drop test requirements for fissile material specified in § 173.465(c)(2).

Q3. Is it correct that fissile materials that qualify for the exceptions prescribed in § 173.453 do not have to comply with the free drop test prescribed in § 173.465(c)(2)?

A3. The answer is yes. Packagings authorized for fissile materials that comply with the exceptions prescribed in § 173.453 do not have to comply with the requirements for fissile materials prescribed in 49 CFR Part 173, except as specifically noted, and are excepted from having to comply with the free drop test for fissile material packagings prescribed in § 173.465(c)(2).

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

Edmonson  
§173.465(c)(2)  
Testing of Packages  
13-0217

Mr. Charles Betts, Director  
Standards and Rulemaking Division,  
Pipeline and Hazardous Materials Safety Administration  
Attn: PHH-10,  
U.S. Department of Transportation  
East Building  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Subject: Clarification of the Package Testing for fissile materials - 49 CFR 173.465(c)(2)

Dear Mr. Betts:

The purpose of this letter is to request a clarification as to when the testing stipulated in 49 CFR 173.465(c)(2) is required. Also requested is a clarification as to the classification and amount of fissile material referenced in the phrase "containing fissile material" in the above cited paragraph.

After review of the regulations and a previous U.S. Department of Transportation (DOT) Letter of Interpretation, dated May 18, 2005 (Reference no. 05-0093), it is clear the testing in 49 CFR 173.465(c)(2) is required for fissile materials under the General Licensing requirements for fissile materials of 10 CFR Part 71, Subpart C, that requires Type A packages in accordance with 49 CFR 173.417(a).

It is also my determination that there are no other fissile material(s) within DOT jurisdiction which would require compliance with additional testing of Type A package in accordance with 173.465(c)(2). Is this determination correct?

Additionally, it is commonly accepted that the testing in 49 CFR 173.465(c)(2) is not applicable to fissile materials that meet the fissile materials exceptions in 49 CFR 173.453. Is that determination correct?

Thank you in advance for your prompt consideration of this request. If you require additional information, please contact me at (865) 250-3300, or by e-mail.

Sincerely,



Mark B. Hawk  
Hazardous Materials Consultant