



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 19, 2019

Mr. James M. Shuler, Manager
Packing Certification Program
U.S. Department of Energy
Office of Packing and Transportation
Washington, DC 20585

SUBJECT: APPLICABILITY OF FEDERAL REGULATIONS TO U.S. DEPARTMENT OF ENERGY TRANSFER OF RADIOACTIVE MATERIAL

Dear Mr. Shuler:

This letter is in response to the U.S. Department of Energy (DOE) letter dated September 21, 2018, from J. Shuler, Manager, DOE Packaging Certification Program, to M. Dapas, Director, Office of Nuclear Material safety and Safeguards (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18309A187). Specifically, the DOE requested guidance from the U.S. Nuclear Regulatory Commission (NRC), with respect to the applicability of the federal regulations to DOE transfer of radioactive material to an NRC or an Agreement State licensee for shipment. This also references a conference call on December 6, 2018, where DOE and NRC staff exchanged additional information on the specific transfer that DOE plans to make with an Agreement State licensee in the State of Tennessee.

The following are the NRC staff's responses to the four specific questions provided in the DOE letter request.

1. May DOE transfer radioactive material (at the DOE site) to an NRC or Agreement State licensee and the NRC or Agreement State licensee becomes the shipper, given that assumption that the NRC or Agreement state license authorizes them to possess and offer for shipment the specific radioactive material?

Response:

Based on the December 6th conference call, the recipient would be an Agreement State licensee who would take possession of the licensed material at a temporary job site in the State of Tennessee under exclusive federal jurisdiction and as such, the Agreement State licensee must obtain approval to obtain the material under NRC jurisdiction. Only the NRC has jurisdiction at locations of exclusive federal jurisdiction. The Agreement State licensee can then act as the shipper after taking possession of the radioactive material from DOE. An Agreement State licensee that has taken possession of the material may ship it to another location as permitted by applicable NRC and U.S. Department of Transportation shipping regulations. The Agreement State licensee should follow the guidance provided in NUREG-1556, Volume 19, Revision 1, "Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity), Final Report" (ADAMS Accession No.

ML16175A107) to obtain reciprocity approval from the NRC. Once the NRC approves a request for reciprocity, the Agreement State licensee can conduct the authorized activities for up to 180-days in a calendar year.

2. Does the material become "licensed material" at the site of transfer?

Response:

Yes, if the material DOE is transferring to the Agreement State licensee is in accordance with applicable regulatory and licensing requirements, the material would be "licensed material" in possession of the Agreement State licensee.

3. Does the NRC or Agreement State license need to explicitly authorize this type of transfer from DOE to the licensee?

Response:

The recipient of the material must be licensed to take possession of the material being transferred and have approval to work in the jurisdiction where the transfer is taking place.

4. Can the licensee take possession of the radioactive material from DOE in a State other than from which the license was issued? For example, what federal regulations apply for a transfer of radioactive materials at a DOE facility in Oak Ridge, Tennessee to an Agreement State licensee (WA), for shipment by that licensee to their facility in Washington?

Response:

The Agreement State licensee can take possession of the radioactive material outside the jurisdiction that issued the license provided that they register for reciprocity with the regulatory agency that has jurisdiction where the transfer is to take place. The Agreement State licensee would take possession of the licensed material at a location in the State of Tennessee that is under exclusive federal jurisdiction. This will require the Agreement State licensee to have authorization on their license to possess radioactive material at a temporary job site and obtain prior approval to work in NRC jurisdiction under reciprocity.

If you have any questions with regard to the contents of this letter, please contact me or Paul Michalak of my staff at (301) 415-5804 or by e-mail at Paul.Michalak@NRC.gov.

Sincerely,



Andrea L. Kock, Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards