

2007-12-19

ADM-02

MEMORANDUM OF UNDERSTANDING

BETWEEN

TRANSPORT CANADA

2007 DEC 27 AM 9:34

AND

THE CANADIAN NUCLEAR SAFETY COMMISSION

1.04

FILE DOSSIER	10-35-0
REFERRED TO RÉFÉRÉ À	Régimbal, A

1. PREAMBLE

WHEREAS Transport Canada (hereinafter, "Transport") regulates the handling, offering for transport, transport and import of dangerous goods under the *Transportation of Dangerous Goods Act, 1992 (TDG Act)*;

AND WHEREAS Transport serves the public interest through the promotion of a safe and secure, efficient and environmentally responsible transportation system in Canada;

AND WHEREAS radioactive nuclear substances are defined as Class 7 dangerous goods in accordance with the Schedule to the *TDG Act* and Part 2 of the *Transportation of Dangerous Goods Regulations (TDG Regulations)*;

AND WHEREAS Transport is responsible for reviewing and approving Emergency Response Assistance Plans (ERAPs) of those persons who offer for transport or import dangerous goods, in accordance with Part 7 of the *TDG Regulations*;

AND WHEREAS Transport operates the Canadian Transport Emergency Centre (CANUTEC) to assist emergency response personnel in handling dangerous goods emergencies;

AND WHEREAS the Canadian Nuclear Safety Commission (hereinafter, "the Commission") regulates, pursuant to paragraph 9(a) of the *Nuclear Safety and Control Act (NSC Act)*, the production, possession and use of nuclear substances, prescribed equipment and prescribed information in order to prevent unreasonable risk to the health and safety of persons, the environment and national security, and to achieve conformity with Canada's international obligations regarding the peaceful use of nuclear energy;

AND WHEREAS, in accordance with section 26 of the *NSC Act*, and subject to the regulations made pursuant to the *NSC Act*, no person shall package, transport, manage or store a nuclear substance except in accordance with a licence issued by the Commission;

AND WHEREAS the Commission regulates the certification of packages used in the transport of nuclear substances, in accordance with the *Packaging and Transport of Nuclear Substances Regulations (PTNS Regulations)*;

AND WHEREAS the Commission licenses the import and export of controlled nuclear substances in accordance with the *Nuclear Non-Proliferation Import and Export Control Regulations (NNPIEC Regulations)*;

CNSC CCSN



3188930

**AND WHEREAS** any information received by or from the Participants in relation to the administration of this MoU is subject to the *Access to Information Act* and the *Privacy Act*;

**AND WHEREAS** any privileged and prescribed information received by or from the Participants in relation to the administration of this MoU is subject to the *TDG Act* and the *NSC Act*, respectively, and any regulations made thereunder;

**AND WHEREAS** Transport is the designated competent authority for Canada with respect to the programs and activities of international modal organizations, such as the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO);

**AND WHEREAS** the Commission and Transport are jointly designated competent authorities for Canada with respect to regulating the transportation of radioactive material as per the IAEA List of National Competent Authorities Responsible for Approvals and Authorizations in respect of the Transport of Radioactive Material (updated annually);

**AND WHEREAS** Transport and the Commission have independent but related regulatory responsibilities related to the transportation of nuclear substances;

**AND WHEREAS** the *Cabinet Directive on Streamlining Regulation* requires that when managing risks on behalf of Canadians, regulatory authorities are to identify and consult with other federal departments and agencies that have a specific interest in the proposed regulations, and are to coordinate the implementation and management of regulation to minimize complexity and duplication;

**AND WHEREAS** the Commission is authorized by paragraph 21(1)(a) of the *NSC Act* to “enter into arrangements, including an arrangement to provide training, with any person, any department or agency of the Government of Canada, or of a province, any regulatory agency or department of a foreign government or any international agency”;

**THEREFORE**, Transport and the Commission will consult and cooperate in accordance with the provisions of this Memorandum of Understanding (MoU) in order to minimize regulatory duplication and to use government resources effectively.

## **2. DEFINITIONS**

“carrier”	means a person who, whether or not for hire or reward, has possession of dangerous goods while they are in transport (from subsection 1.4 of the <i>TDG Regulations</i> ).
“Category I, II or III nuclear material”	has the meaning assigned to any of the categories by section 1 of the <i>Nuclear Security Regulations</i> .
“classified information”	means information which may be subject to an exemption under the <i>Access to Information Act</i> or the <i>Privacy Act</i> and

	that its unauthorized disclosure, destruction, removal, modification, interruption, or use would reasonably be expected to cause injury to the national interest.
“conveyance”	means (a) for transport by road or rail: any vehicle, (b) for transport by water: any vessel, or any hold, compartment, or defined deck area of a vessel, and (c) for transport by air: any aircraft.
“dangerous occurrence”	has the meaning assigned to that term by paragraphs 19 (1) (a) to (g) of the <i>PTNS Regulations</i> .
“means of containment”	means a container or packaging, or any part of a means of transport that is or may be used to contain goods (from section 2 of the <i>TDG Act</i> ).
“means of transport”	means a road or railway vehicle, aircraft, ship, pipeline or any other contrivance that is or may be used to transport persons or goods (from section 2 of the <i>TDG Act</i> ).
“nuclear substance”	has the meaning assigned to that term by section 2 of the <i>NSC Act</i> .
“package”	means packaging with its radioactive contents, as presented for transport (from subsection 1 (1) of the <i>PTNS Regulations</i> ).
“packaging”	means the assembly of components necessary to enclose the radioactive contents completely.
“Participant”	means the Commission or Transport.
“Participants”	means the Commission and Transport.
“Permit for Equivalent Level of Safety”	means an authorization issued under section 31 of the <i>TDG Act</i> to conduct an activity in compliance with the conditions of that authorization instead of the requirements of the <i>TDG Regulations</i> .
“prescribed information”	means the information prescribed by section 21 of the <i>GNSC Regulations</i> .
“privileged information”	means information as set out in section 24 of the <i>TDG Act</i> .
“protected information”	means information that is sensitive but not in relation to the national interest of Canada.
“special arrangement	means a certificate which indicates those provisions,

package certificate” approved by the competent authority, under which consignments which do not satisfy all the applicable requirements of the *PTNS Regulations* may be transported.

“transit” means the process of being transported through Canada after being imported into and before being exported from Canada, in a situation where the place of initial loading and the final destination are outside Canada (from subsection 1 (1) of the *PTNS Regulations*).

### **3. PRINCIPLES**

- 3.1 The Participants, in carrying out their respective mandates, will cooperate and support each other, as appropriate, in meeting their responsibilities.
- 3.2 The Participants will offer each other training on their respective Acts and regulations, as applicable and where needed.
- 3.3 The Participants will take all reasonable steps to see that their policies and measures are complementary.
- 3.4 The Participants will provide each other the opportunity to advise on policies and programs that may affect the discharge of their mandate on the other, in a manner that allows for timely and substantive advice.
- 3.5 The Participants will foster strong working relationships by establishing mechanisms and links for sharing information, taking into account any legal constraints on the sharing of protected, classified, privileged and prescribed information, including confidential business information.

### **4. UNDERSTANDINGS AND ARRANGEMENTS**

- 4.1 Consistent with their respective mandates, the Participants understand that packages to be used for the purpose of transporting radioactive nuclear substances or devices containing radioactive nuclear substances and certain aspects of handling thereof prior to, during and after transportation are regulated pursuant to the *NSC Act*, while the handling, offering for transport and transport thereof are regulated pursuant to the *TDG Act*.
- 4.2 Regulations made pursuant to the *TDG Act* will, to the extent practicable, take into account regulations made or licences issued pursuant to the *NSC Act*.
- 4.3 Regulations made and licences issued pursuant to the *NSC Act* will, to the extent practicable, take into account regulations made pursuant to the *TDG Act*.
- 4.4 The Participants will consult and cooperate with each other in

- a. the development of regulations, standards and criteria for the transportation of radioactive nuclear substances; and,
  - b. promoting public awareness, monitoring compliance and enforcing regulatory requirements.
- 4.5 Acknowledging the potential for regulatory overlap and in accordance with each Participant's statutory obligation to discharge its mandate,
- a. where reference to the Commission's regulations in the *TDG Regulations* creates any enforceable requirements, obligations or offences pursuant to the *TDG Act* on the consignor, consignee or carrier, action will normally be taken under the *NSC Act*, and
  - b. where reference to Transport's regulations in the CNSC's *PTNS Regulations* creates any enforceable requirements, obligations or offences pursuant to the *NSC Act* on the consignor, consignee or carrier, action will normally be taken under the *TDG Act*.
- 4.6 The Participants will be the lead agencies for dealings with the public, other federal and provincial authorities, foreign national authorities and international organizations, for those activities where they are identified as the responsible agency as set out in the Appendix to this MoU.
- 4.7 For the purposes of clarification, and without restricting or limiting the generality of the foregoing, the consultation and cooperative practices concurred under this MoU are further described in the Appendix.

## **5. COSTS AND COST SHARING**

- 5.1 To the extent practicable, a Participant will provide or honour, without charge to the other Participant, the arrangements made in this MoU.
- 5.2 Should financial arrangements be necessary, the Participants will consult and cooperate to develop mutually satisfactory arrangements for cost sharing and/or funding.

## **6. NOTIFICATION OF INABILITY TO ACT UNDER THIS MOU**

- 6.1 A Participant will notify the other Participant, as soon as possible, if the determination is made that it is unable to continue to act under this MoU due to factors such as legislative or regulatory changes, court decisions, or changes under other domestic or international agreements or obligations.

**7. CONFLICT RESOLUTION**

7.1 The Participants will make every reasonable effort to resolve at the working level any disputes regarding interpretation of this MoU. Failing resolution at the working level, conflicts may be referred for resolution to each Participant's respective primary point-of-contact identified at the end of this MoU or, failing resolution between the primary points-of-contact, to the designated signing authorities for this MoU.

**8. DURATION**

8.1 This MoU shall be effective for five (5) years from the effective date unless an exchange of letters, with signatures from each Participant's designated signing authority specifies a different duration.

**9. AMENDMENT**

9.1 This MoU may be revised by the mutual written consent of the Participants.

**10. PERIODIC REVIEW**

10.1 This MoU will be reviewed by the Participants' primary points-of-contact every three (3) years or at any time the need is identified by either one of the Participants to this MoU to verify that the MoU is functioning as originally intended.

**11. EFFECTIVE DATE**

11.1 This MoU becomes effective on the date of the last signature.

**12. WITHDRAWAL**

12.1 Either Participant may withdraw from this MoU by providing at least six (6) months notice in writing to the other Participant, specifying its intention to withdraw and the effective date of withdrawal.

12.2 If six (6) months notice is not given in writing, a Participant may still withdraw provided the other Participant agrees, in writing, to an expedited withdrawal date.

**13. PRIMARY POINTS-OF-CONTACT**

13.1 The primary points-of-contact under this MoU are the

Director  
Compliance and Response Branch  
Transport of Dangerous Goods Directorate  
Transport Canada  
Place de Ville, Tower C  
330 Sparks Street  
OTTAWA, Ontario  
K1A 0N5

Director  
Packaging and Transport Licensing Division  
Directorate of Nuclear Substance Regulation  
Operations Branch  
Canadian Nuclear Safety Commission  
280 Slater Street  
OTTAWA, Ontario  
K1P 5S9

13.2 The primary points-of-contact are responsible for the administration of this MoU, and will meet annually or as often as is mutually agreed to be appropriate.

**14. OTHER**

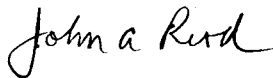
14.1 This MoU replaces the Inter-Departmental Memorandum of Agreement on the Transport of Radioactive Materials, dated June 11, 1981.

**15. SIGNATURES**

Signed in duplicate in English and French, both versions being equally authentic.

For Transport Canada

For the Canadian Nuclear Safety  
Commission



Dr. John A. Read  
Director General  
Transportation of Dangerous Goods

Linda J. Keen  
President

Signed on:

Signed on:

December 19, 2007

November 2, 2007

**APPENDIX TO THE  
MEMORANDUM OF UNDERSTANDING (MoU) BETWEEN TRANSPORT  
CANADA AND THE CANADIAN NUCLEAR SAFETY COMMISSION**

**PURPOSE**

This appendix outlines how the Participants will discharge their mandates such as to avoid or minimize regulatory overlap and duplication.

**CONSULTATION AND COMMUNICATIONS**

**1. Package Requirements and Issuance of Certificates and Permits**

- A. The Commission is responsible for the certification of packaging and contents, i.e. package, including setting of requirements for packaging, assessment of design, construction and testing, and issuance of transport certificates in accordance with the *NSC Act* and the *PTNS Regulations*.
- B. Transport will consult the Commission and provide it a reasonable time to review and comment before issuing Permits for Equivalent Level of Safety for Class 7 dangerous goods.

**2. Regulating the Handling of Shipments**

- A. The Commission, in consultation with Transport as needed, is responsible for regulating:
  - 1) the handling for transport prior to loading on a conveyance;
  - 2) the transport, segregation and storage in transit;
  - 3) the handling after unloading from conveyance at the destination;
  - 4) the safety marks required for packages; and
  - 5) the shipping documents
- B. Transport, in consultation with the Commission as needed, is responsible for regulating handling, offering for transport, transporting and importing, and for overseeing emergency response, including:
  - 1) the handling of a consignment from point of loading the means of containment onto the means of transport;
  - 2) the loading and securing in transport;
  - 3) the transport to destination;
  - 4) the handling during unloading;
  - 5) the safety marks and placarding of means of containment and means of transport;
  - 6) the training of persons who handle, offer for transport, transport or import dangerous goods; and
  - 7) the shipping documents and instructions to carrier.

- C. The Participants are both responsible for ensuring that a person who handles, offers for transport, transports or imports Class 7 dangerous goods is adequately trained and holds a training certificate prescribed under the *TDG Act*.

### **3. Regulating the Carriers, Conveyances, Means of Transport and Means of Containment**

- A. The Participants, in consultation with each other, establish and enforce any transportation requirements for carriers, conveyances, means of transport and means of containment in accordance with their respective Acts and regulations as applicable.
- B. The Commission establishes and enforces the radiation protection program requirements for carriers.

### **4. Monitoring Compliance and Enforcement**

- A. A Participant authorized by statutory authority to monitor and enforce compliance is responsible for inspections within its area of jurisdiction, and the other Participant will be prepared to assist, and will assist as requested.
- B. Inspectors from the Participants may conduct joint compliance inspections as required.
- C. Each Participant may appoint, with suitable training, qualified persons from the other's organization to be an inspector under their respective Act.

### **5. Security**

- A. The Commission is responsible for regulating all aspects of physical security of nuclear substances and prescribed equipment, as defined under the *NSC Act* and its regulations, against sabotage or theft for all modes and phases of transport and handling by persons licensed by the Commission, and carries this out in consultation with Transport.

### **6. Import and Export**

- A. The Commission issues licences for import and export of nuclear substances and prescribed equipment and is responsible for monitoring and enforcing compliance with these licences.

### **7. Investigation of Incidents and Accidents**

- A. The Commission is the lead investigator in the event of a dangerous occurrence, sabotage, theft or loss of Class 7 dangerous goods during transportation. However, this does not preclude the conduct of an investigation under the *TDG Act*, where warranted.

B. Each Participant will support the other Participant during an investigation, as needed.

**8. Emergency Response Assistance Plans (ERAP), Emergency Preparedness and Response**

- A. Transport is responsible for setting the requirements of ERAPs, and assessing, reviewing and approving such plans.
- B. The Commission may, if requested by Transport, provide advice to Transport in setting the requirements of ERAPs involving Class 7 dangerous goods, and in assessing, reviewing and approving such plans.
- C. Transport maintains the Canadian Transport Emergency Center (CANUTEC) to provide advice in response to any transportation emergency, including those involving Class 7 dangerous goods.
- D. The Commission will inform Transport of any transport incident involving Class 7 dangerous goods.
- E. Transport will ensure that CANUTEC contacts the Commission's Duty Officer by telephone at (613) 995-0479 immediately upon CANUTEC being notified of a transportation emergency involving Class 7 dangerous goods, and, the Commission's Duty Officer will immediately contact CANUTEC at (613) 996-6666 upon the Commission's Duty Officer being notified of a transportation emergency involving Class 7 dangerous goods.
- F. Transport will attend accidents in accordance with its Accident Attendance Policy.
- G. The Commission will respond to any transportation emergencies involving Class 7 dangerous goods, including, as needed, providing advice to on-scene emergency personnel, or, if requested by Transport, providing representation on-scene.
- H. The Commission will provide training related to radiological and nuclear safety to personnel who may be the first responders to any transport emergency involving Class 7 dangerous goods.

**9. International Meetings**

- A. Transport will provide a representative to technical meetings of international modal organizations, such as the International Civil Aviation Authority (ICAO) and the International Maritime Organization (IMO), unless otherwise mutually agreed between the Participants for specific items.
- B. The Commission will provide advice to the representative of such international modal organizations on matters related to the transportation of radioactive nuclear substances, as required.

- C. The Commission will provide a representative to technical meetings and other activities of the IAEA related to the transportation of radioactive nuclear substances, unless otherwise mutually agreed between the Participants for specific items.
- D. Transport may provide a representative to relevant meetings under the IAEA, with the understanding that should a Commission representative also attend the meeting, the Commission representative would normally be the lead representative.