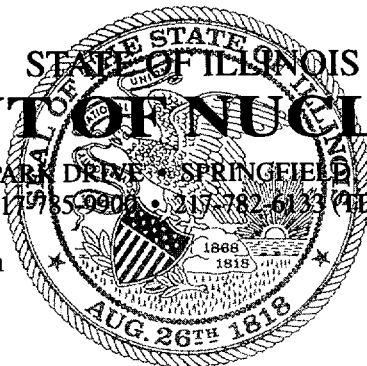


STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

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George H. Ryan
Governor



Thomas W. Ortziger
Director

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G. Comfort, NMSS
IL file

April 6, 2001

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OSP

Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Frederick C. Combs, Deputy Director, STP

Re: State Agreements Program Letter, STP-01-007
"Technical Conferencing Forum - Request for Comments on Part 40 Draft Proposed
Rulemaking Plan"

Dear Mr. Combs:

The Illinois Department of Nuclear Safety (Department) hereby provides comments requested in the above-identified Agreement States letter. The State Programs letter describes predecisional text for a proposed NRC rulemaking plan intended to:

- 1) address the distribution of source material, to persons exempt from licensing and to general licensees, in such a manner that Part 40 requirements are risk-based,
- 2) resolve petition PRM 40-27, regarding potentially elevated exposures to workers at generally-licensed facilities exempt from Parts 19 and 20, and
- 3) resolve petition PRM 40-28, regarding exempted depleted uranium counterweights.

Predecisional text describing five proposed options for approaching the rulemaking plan was posted on the Technical Conference Forum.

The Department agrees with the recommendation that 10 CFR Part 40 be revised in accordance with the provisions of Option 4. Option 4 would modify Part 40 to increase requirements for distribution of source material to exempt persons and to general licensees. The primary provision of Option 4 replaces the current generic exemption and general license provision with "tiers" of increasing requirements, based on:

- assessment of occupational and public risk,
- evaluation of impacts to persons and the environment, and
- quantity, use, form and/or concentration.

Option 5 incorporates the provisions of Option 4, but additionally reduces the 15 and 150 pound allotments provided by current regulations. It remains to be demonstrated whether such reduction is warranted or overly restrictive. The Department anticipates that, during an Option-4 rule development period, collection of additional information regarding affected source material users may demonstrate that it is appropriate to incorporate Option 5 provisions. If subsequent data demonstrates a risk-based need for Option 5 provisions, the provisions should be realistically regarded -- health risk considerations should dominate over budgetary, staffing or user-convenience considerations.

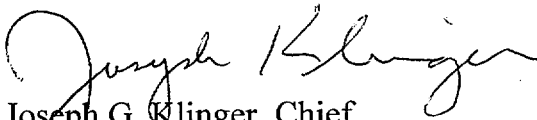
In the draft rulemaking plan, it is proposed that specific license authorization be required to distribute (initially transfer) source material to exempt persons, or to distribute (commercially transfer) source material to general licensees. The plan proposes that additional data gathered under the new reporting requirements included in this specific authorization would be evaluated to determine if additional regulations or changes to regulations are warranted. The Department agrees with Commissioner Diaz (SECY-99-259 Voting Record, March 9, 2000,) in that the NRC:

"...should not include such reporting requirements if their sole purpose is for NRC to obtain knowledge about how people are using material under the exemption or general license,..." and

"...should only include reporting requirements necessary for assurance of adequate protection of public health and safety."

The Department expects further definition and discussion of the issues, and looks forward to reviewing details of the "tiered-approach" provisions. We will likely have additional comments as the formal proposal develops. Should you have any questions regarding the Department's perspective, please contact me at (217) 785-9947.

Sincerely,



Joseph G. Klinger, Chief
Division of Radioactive Materials

JGK:DSP

cc: Jim Lynch, Region III, State Agreements Officer