



September 21, 2010

Secretary

Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket # NRC-2008-0120

To Whom it May Concern:

On behalf of the members of The Council of State Governments' Midwestern Radioactive Materials Transportation Committee, we are writing to submit comments on the NRC's Proposed Rule on Physical Protection of Byproduct Material, published on June 15, 2010 (*Federal Register* vol. 75, No. 114, pp. 33902-33947). The 12 states in the Midwestern region participate on the committee: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The committee's comments are limited to the transportation-related aspects of the proposed rules.

The Midwestern states agree with the NRC's decision to promulgate the existing orders in regulations for the purpose of giving stakeholders an opportunity to provide comments and to make them generally applicable to all licensees. We note that, as part of the rulemaking process, the NRC is planning to hold "at least one public workshop" on any forthcoming guidance documents on the new security requirements. To make this information accessible to the greatest number of stakeholders, we encourage the NRC to hold more than one workshop and to locate the workshops in a central location within each NRC region.

In the answer to Transportation Security question #4 (p. 33918), the NRC states that "verification of the transferee's license" is "necessary." The Midwestern states agree. In terms of the timing and frequency of the verification process, for the states, the verification should take place as close to the shipping date as possible. We recognize, however, that there is a need to balance the states' needs with the burden placed on the shipper. We believe the NRC must decide on the most appropriate frequency of checks based on the capabilities of the new web-based system it is developing for this purpose. If the new system will be user friendly, fast, and updated often, then frequent checks should not be a burden. An annual check would not be acceptable.

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Regarding question #5 (p. 33918), the Midwestern states agree with the NRC that "24 hours is too long before starting an investigation" into the possible theft or diversion of material. The proposed two-hour timeframe for Category 1 material and four-hour timeframe for Category 2 material seem reasonable.

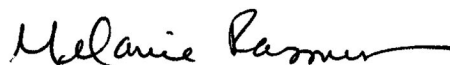
Regarding question #8 (p. 33919), the proposal is for the receiving licensee to notify the shipping licensee "no later than four hours after the package arrives." However, the shipping licensee for shipments containing Category 1 material is required to begin an investigation if the shipment does not arrive within *two* hours of the estimated arrival time. The Midwestern states suggest that the NRC consider modifying these timeframes to provide more consistency between the timing of notifications and the initiation of investigations.

Regarding question #9, the Midwestern states note that the NRC is considering a rule that would require shippers to provide advance notification to tribes for shipments of irradiated reactor fuel. The final rule on byproduct material should be consistent with whatever rule the NRC promulgates for tribal notifications.

Finally, with regard to question #26, the Midwestern states believe it is imperative that the requirements for the transshipment of material be identical to those for domestic shipments. We understand that DOT and DHS regulate transshipments, but it is both ineffective and inefficient to have different sets of rules for shipments based on their final destination. We urge the NRC to work with the other federal agencies to harmonize the regulations so that licensees and their regulators at the federal and state level follow consistent rules for all shipments. In a letter dated January 18, 2008, the state of Illinois suggested general licensing of carriers as one way to resolve this issue. We urge the NRC to consider this approach and others in order to ensure that *all* shipments of Category 1 and 2 material that travel within the U.S. are "subject to enhanced security requirements and safeguarded during transport," not just domestic shipments or those involving imports or exports.

We appreciate the opportunity to weigh in on the proposed rules. If you have any questions about our comments, please contact Lisa Janairo with CSG Midwest at 920/458-5910.

Sincerely,



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