

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

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July 2, 2002

Merri Horn
Rulemakings and Guidance Branch
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Questionnaire from NRC Rulemaking Improvement Task Force (STP-02-045)

Dear Ms. Horn:

The Illinois Department of Nuclear Safety hereby submits the following response to the above-identified questionnaire. NRC has provided the questionnaire to the Agreement States as part of an evaluation of its rulemaking process. Because the agreement states often participate in NRC rulemakings, NRC is seeking responses to the following questions.

1. At what stage in the rulemaking process would the Agreement States like to become involved and to what degree? When the NRC first anticipates the potential need for a rulemaking the staff develops a Rulemaking Plan (in most cases) to outline the regulatory problem (i.e., the need for the rulemaking) and identify options to correct the situation. The Plan may include specific regulatory proposals. The current NRC procedure is to provide the draft Rulemaking Plan to the Agreement States for comment prior to Commission approval of the Plan.

Response. The current procedure is appropriate.

2. When should Agreement States participate on NRC's working group? The working group is responsible for development of the Rulemaking Plan, the proposed and final rule, and all supporting documents. What is the best method to ensure that one Agreement State participant expresses the views of all Agreement States or should a single participant just represent their own State?

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Add: Merri
Horn

Response. As soon as the draft rulemaking plan is available, Agreement State participants should be selected and involved. The selected participants should solicit the views of other states. The view of the majority of the states should be represented. A selected participant should not represent the view of only his or her state. If a state feels strongly that a minority view should be expressed, then that state should provide a written statement to the working group.

3. Should Agreement State involvement be dependent upon various factors (i.e., the potential complexities of the rule, potential impact on States, particular State expertise, etc.)?

Response. Agreement State involvement in any activity with NRC, OAS or CRCPD is always dependent upon the factors listed in question 3. Other factors, such as resources of time and money play a large role, also. Each state is subject to different priorities and pressures, which change over time.

NRC must recognize that it cannot demand state participation, or consider lack of participation to be equivalent to lack of interest. The best approach is to solicit input, specify particular needs, and possibly re-assess priorities based on responses from Agreement States.

4. When the NRC is developing the rule without specific Agreement State support, what is the best method to provide Agreement States NRC products? And what products should the NRC provide (early drafts, drafts prior to going to the EDO/Commission, etc.)?

Response. Use notices from the Office of State and Tribal Programs. These should include early drafts and all later drafts.

5. Currently Agreement States can use the TCF to provide input to the NRC. Can this be improved and/or what other methods would Agreement States like to use to provide input to the NRC?

Response. The TCF or similar mechanisms could be used for technical exchanges of information and ideas, but states should use formal letters for formal communications to NRC. The TCF is used to download information, but is not used by many states for posting comments.

6. How should the NRC treat comments from State officials that are not the official Agreement State comment?

Response. On a case-by-case basis, contact the radiation control program director regarding such comments. However, if comments are offered in a public forum such as a workshop or an Agreement State or CRCPD meeting, NRC should take those comments into consideration even if they are not followed up by a formal letter on state agency letterhead.

7. How long should the Agreement States generally have to comment?

Response. Generally 45 days, except for long documents, which need 90 days. This could be shortened if NRC had already provided a version of a rule and was issuing a revision to it. It might be possible to ask for a review time of 30 days if the revision highlighted changes from the previous version.

8. When Agreement States identify a regulatory problem and has the expertise to develop a rulemaking, should Agreement States take the regulatory lead in the rulemaking process?

Response. Having the expertise is a necessary but not sufficient condition to develop a rulemaking. Having the time and financial resources to do a rulemaking in a timely manner is also important. The rulemaking process in some states is not as elaborate as NRC's, and the work product might not have the backup information that NRC needs to adopt a similar rule.

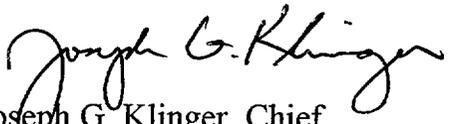
Also, past history indicates that NRC is prone to think that it knows better than states with comparable expertise. NRC has re-written rules and made its versions matters of compatibility. Thus, states with adequate regulations were required to perform second rulemakings. Industrial radiography and well logging rulemakings are examples of this situation. To address the problem, NRC and the Organization of Agreement States should engage in early resolution of regulatory questions that might affect several Agreement States and NRC.

9. How should the NRC interact/coordinate with Agreement States regarding the setting of priorities for various rulemakings?

Response. NRC should work with the Organization of Agreement States on an equal-partners basis to set priorities. The Organization of Agreement States should obtain information from Agreement States through RADRAP or as part of the annual OAS meeting. The Office of State Programs should request input by means of notices to the Agreement States.

Thank you for the opportunity to participate in this survey. If you have questions, please contact me at (217) 785-9930.

Sincerely,


Joseph G. Klinger, Chief
Division of Radioactive Materials

cc: James Lynch, NRC Region III