

August 20, 2009

Mr. Steve Tarlton  
Program Manager  
Radiation Control Program  
Colorado Department of Public Health  
and Environment  
HMWMD-RAD-B2  
4300 Cherry Creek Dr. S.  
Denver, CO 80246-1530

Dear Mr. Tarlton:

I am responding to the petition for rulemaking dated May 10, 1999, submitted to the U.S. Nuclear Regulatory Commission (NRC) by the State of Colorado and the Organization of Agreement States. The petition was docketed as PRM-40-27 and requested that the NRC amend its regulations to eliminate an exemption from the requirements of 10 CFR Parts 19 and 20 that currently applies under the general license for small quantities of source material found in 10 CFR 40.22(b) and require notification and instruction of individuals who participate in licensed activities.

The notice of receipt of the petition was published in the *Federal Register* on July 7, 1999 (64 FR 36615). The public comment period closed on September 20, 1999. The NRC received ten comment letters. Comment letters were submitted by two members of the public, one private company, and seven Agreement States. All commenters supported the petition. In addition, one additional comment was received, but was instead considered and resolved as a separate petition for rulemaking (PRM-40-28) on depleted uranium counterweights.

The NRC considered the petition and its supporting rationale. For the reasons provided in the enclosed *Federal Register* notice, the NRC has determined that the issues raised in your petition should be considered in the rulemaking process. In summary, although the NRC is not aware of wide spread issues related to possession of source material under 10 CFR 40.22, the NRC has collected and evaluated data on practices allowed under the general license which indicate that it may be possible in certain situations for exposures to occur when the requirements in 10 CFR Parts 19 and 20 would normally apply. The NRC has concluded that further consideration through rulemaking is appropriate. The *Federal Register* notice regarding the petition is being transmitted to the Office of the Federal Register for publication.

The NRC will consider this issue as part of a proposed rulemaking on "Distribution of Source Material to Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License (Part 40)," RIN 3150-AH15. Further information on this rulemaking may be tracked through <http://www.regulations.gov> under Docket ID NRC-2009-0084. As in all rulemakings,

S. Tarlton

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the NRC will solicit and consider public comments during the proposed rule phase of the rulemaking before determining the approach that will be the basis for the final rule. In addition, the NRC publishes a Regulatory Agenda (NUREG-0936) which is a semiannual compilation of all rules on which the NRC has recently completed action, has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve. The regulatory agenda may be found on the NRC's rulemaking website at <http://www.nrc.gov/about-nrc/regulatory/rulemaking.html>. Specific information on this rulemaking may be found by searching the Regulatory Agenda for either the RIN number 3150-AH15 or Docket ID NRC-2009-0084.

Sincerely,

**/RA/**

Bruce S. Mallett,  
Acting Executive Director  
for Operations

Enclosure: *Federal Register* notice

cc: Ms. Julia A. Schmitt, OAS

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Acting Executive Director  
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DATE	8/14/09	8/20/09		

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August 20, 2009

Ms. Julia A. Schmitt  
Organization of Agreement States  
Department of Health & Human Services  
Regulation and Licensure  
301 Centennial Mall South  
P.O. Box 95007  
Lincoln, NE 68509-5007

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