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September 30, 2011

Ms. Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB)  
Office of Administration, Mail Stop: TWB-05-B01M  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

DOCKETED  
USNRC

September 30, 2011 (11:30am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: FSME-11-042

Dear Ms. Bladey,

The Organization of Agreement States (OAS) Executive Board appreciates the opportunity to comment and address the Environmental Assessment and the Proposed Rule to Amend 10 CFR 40 as outlined in FSME-11-042. We do apologize for the late comments as the deadline was August 1, 2011. Please note that the Board has raised some process issues in Comments No. 1, 2 and 5. We offer the following:

1. The FSME-11-042 letter was sent to State Liaison Officers only, not Agreement States or Radiation Control Program Directors. Not all State Liaison Officers work in the Radiological Health programs and they do not share this information with the respective program. The Board feels this letter should have been sent to the affected Agreement State programs directly.
2. The title and verbiage describing the proposal focuses on the Integrated Safety Analysis (ISA) proposal. The only statement regarding licensing jurisdictions is listed under Section III B on page 28338, which states: "The NRC would assert jurisdiction over all applicants and licensees that may possess 2000 kg or more of UF6." The Board feels that the title of these letters needs to be more succinct in the future.
3. The licensing authority for Agreement States is the Agreement signed by the Governor and the NRC Chairperson. In the Board's opinion a regulation change cannot supersede the Agreement as authorized under Section 274 of the Energy Policy Act.
4. The purpose behind this change is for health and safety risks of UF6. Combining the byproduct material into the SNM license will not enhance the health and safety of the material licensed under the byproduct license. The appropriate Agreement State has performed several inspections of operations under these licenses and has found the material to be used in a safe manner that does not pose a health or safety risk to licensee personnel or the public. The Board feels that allowing the NRC to regulate all

Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin

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radioactive material at a facility possessing more than 2000 kg of UF6 will not enhance radiation safety at these facilities.

5. In the area of openness the conference call regarding this issue was scheduled on August 16<sup>th</sup> to be held the next morning beginning at 9 am. This correlates to 6 am on the West Coast. This was an inappropriate time for those Agreement States. The e-mail notification was sent out at 3:59 pm which left very little time to prepare and ensure all affected Agreement States could participate. The Board feels that in the future conference calls need to be arranged with a longer lead time and the start time should fall during normal working hours of all the continental United States.
6. The Board agrees with the concept of licensees possessing more than 2000 kg of UF6 performing an ISA.

Lastly, the Board encourages the Nuclear Regulatory Commission to continue to enhance its strong collegial relationship with the Agreement State co-regulators. We appreciate the chance to comment and stand ready to answer any questions you may have.

Sincerely,



Cheryl K. Rogers, OAS Chair

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## Rulemaking Comments

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**From:** Rogers, Cheryl K - DHS [Cheryl.Rogers@dhs.wisconsin.gov]  
**Sent:** Friday, September 30, 2011 10:05 AM  
**To:** Rulemaking Comments  
**Cc:** 'OAS Executive Board'; Lohr, Edward; Piccone, Josephine; Kinneman, John; Bladey, Cindy  
**Subject:** FSME-11-042 comments  
**Attachments:** FSME\_11\_042.pdf

Attached are comments for FSME-11-042