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From: "Frazee, Terry (DOH)" <Terry.Frazee@DOH.WA.GOV>
To: <SECY@nrc.gov>
Date: Mon, Sep 11, 2006 8:15 PM
Subject: RIN 3150-AH84 Proposed Rule

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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

DOCKETED
USNRC

September 12, 2006 (12:23pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Madam Secretary:

Thank you for the opportunity to comment on the proposed rule designed to implement certain provisions of the Energy Policy Act of 2005 (EPAAct). The EPAAct expands NRC's regulatory sphere but is still short of the scope regulated by the state of Washington and other Agreement States. The state of Washington has a long and successful history of regulating all sources of ionizing radiation--x-ray machines as well as radioactive materials. With that said, we draw your attention to the EPAAct requirement that:

"The Commission...to the maximum extent practicable--
(i) cooperate with States; and
(ii) use model State standards in existence on the date of enactment of this Act."

We take this plain language of the statute to be Congress' clear indication that the substantive burden should be on the NRC to bring its regulations into conformance with that of Washington and the other Agreement States, since our regulations have, for 40 years or more, already provided for the safe control of the sources that will only now, after the enactment of the EPAAct, come under the jurisdiction of the NRC. We do not believe that Congress intended NRC to use its new authority to disrupt the existing State programs already regulating the use of Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM).

The NRC, in its deliberate use of the Compatibility B category and H&S adequacy category, is clearly setting the tone that its considerations are preeminent. Despite Congress' clear intent to cooperate with states, NRC has essentially ignored input such as the overwhelming support of the Agreement State Program Directors for a "D" compatibility designation (33 of 34 Agreement States) for the "H&S definitions". We believe that the "D" compatibility designation would not result in any requirement for substantive changes to State statutes or rules under which Washington and other Agreement States have been meeting the "essential objectives" of the new rules for the past 40 years or more.

A requirement to revise the definitions and regulations currently in use (which for the definitions in many cases are in both state statute and regulation) would create an enormous and unnecessary burden upon Washington and other Agreement States, potentially cause confusion for Agreement State licensees, and would not provide any measurable improvement to the system of regulation, since these NARM materials are already regulated under a system that is compatible with the programs implemented to regulate other byproduct, source and special nuclear material. If the Agreement States are currently compatible with respect to their regulation of other byproduct, source or special nuclear material, they will continue to be compatible with respect to the NRC's addition of NARM, since these sources are all regulated in the same manner. The only gap at issue should be the very sizable gap in the NRC regulations created by the former exclusion of NARM from the NRC jurisdiction, which the Agreement States have filled for many years. The NRC needs to work to fill that gap now that it has jurisdiction over these materials, and the Agreement States are willing and able to assist the NRC in this matter, but it is the NRC, in this case, that needs to move toward compatibility with the Agreement States on this issue and not vice versa.

It is especially important that NRC keep in mind the EPAAct language requiring it "to the maximum extent practicable" to cooperate with States or use model State standards. NRC should not force the Agreement States to make minor word changes in the Agreement States' regulations to be just like the NRC's words. The NRC should recognize that the Agreement States' regulations have functioned quite well on a national

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basis for decades and do not need to be changed to be exactly like the NRC's.

For purposes of compatibility, we recommend that the definitions arising from the EPA Act of 2005 NARM provisions receive a compatibility designation of "D," and that it be acknowledged, given the Agreement States broad jurisdiction over NARM and machine-produced radiation, that they are not required for the purposes of Health and Safety.

With regard to certain other approaches that NRC has proposed in the Federal Register Notice, we believe that NRC is not being consistent and not using the state model as Congress intended. NRC uses the "exempt - general license - specific license" hierarchy in its regulation of AEA materials. The Agreement States, in the Suggested State Regulations for Control of Radiation, allow an exemption for very small amounts of radium-226. So why does NRC ignore that model and propose to put those items containing 3.7 kBq (0.1 uCi) or less of radium-226 under a general license? There is no problem known to exist with these exempt sources so there is not sufficient reason for the NRC not to exempt them as the States have done for many decades. If the NRC is aware of some risk to public health and safety from these very low activity sources, then it should provide the information. Once NRC starts down a path, there is little incentive, and a lot of work, to change course. So don't start down the wrong path; use the state model as directed.

Finally, if NRC ignores Agreement State advice and makes decisions that would require us to amend our State statutes and regulations, then the effective date of the final rule needs to be extended by five years in order for us to attempt to convince our legislators that they have to change State statutes.

Thank you for the opportunity to provide this input to the NRC on this proposed rule. Please contact me if have any questions regarding this matter.

Public Health - Always Working for a Safer and Healthier Washington

This message from Terry C. Frazee
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Also, visit our Home Page at
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