

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

September 16, 2013

Secretary, U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Re: Opportunity to Comment on Draft Revisions to the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Principles and Policy for the Agreement State Program” (FSME-13-055)

Secretary:

The New York State Department of Health Bureau of Environmental Radiation Protection submits the following comments:

The Policy Statement is described as solely guidance. Throughout the Policy Statement the Commission states that Agreement States should implement legally binding requirements on regulated parties and should implement program elements that are compatible with those of the Commission. In fact the Commission expects and essentially requires states to do so in order to be deemed adequate and compatible. There is very little flexibility for States to anything other than implement a program that is essentially identical to NRC’s in every respect.

In the second paragraph it is stated: For the purposes of this Policy Statement, "program element" means **any** (emphasis added) component or function of a radiation control regulatory program, including regulation and/or other legally binding requirements imposed on the regulated persons, which contributes to implementation of that program. The specification of any component it too broad in scope. The components need to be more clearly and/or narrowly described and must have a clear nexus to health, safety and security.

Background

In the last paragraph, the last sentence states' "The Commission will consider such advice in its final decision." This should be changed to the Commission will use it’s best efforts to arrive on a consensus with the Agreement States, as intended by the AEA.

1. Adequacy

The H&S compatibility category is confusing and ill-defined. Many regulations contain the H&S category, and the Commission reviews and approves/disapproves a state's legally binding requirements in an identical manner as regulations designated as Categories A, B and C. This is likely to do with the fact that the only means to implement such H&S elements is via legally binding requirements and not by Agreement State program elements. The fact that the

Commission has H&S in their regulations rather than in program elements supports this comment.

Category D

The discussion of this category needs revision, or more appropriately should be moved to a general overview of the categories and or included, in part, in Category C. Category D is simply those items that a state does not need to implement, period. The discussion regarding flexibility would be more appropriate in Category C, where the state can be more restrictive.

The H&S category is not presented in this section, but should be.

Statement of Principles and Policy for Agreement State Program.

Section IV. Item 1.B. Compatibility B

After 51 years of working experience for the Agreement State program, the Commission should easily be able to identify those regulatory areas which it has, and is presumed will continue to, designate as Compatibility B elements. The Commission has addressed health and safety for all these years and has identified Category B items in its recent implementation of 10 CFR 37. Therefore the Commission should include a listing of those specific areas for which it has determined have significant transboundary implications that warrant the use of Category B designations, and state why each program area identified has significant transboundary implications. If a clear listing is provided it may not be necessary to state that the Commission will limit the number of Category B elements. Also, we strongly disagree with the logic that the listing of examples could lead to misinterpretation by the Agreement States. Without a comprehensive list, the application of Category B would appear to be arbitrary.

The rulemaking process in New York State requires that the program take economic consideration (costs) to regulated parties in consideration and provide impact analysis of such costs. The Commission should be aware of such state requirements when formulating new and revised regulations.

Performance bases for compatibility.

The Commission currently uses a process whereby regulations are reviewed by NRC Headquarters to determine a state's compatibility with Commission regulations and H&S item that are in NRC regulations. This is effectively performed outside of the IMPEP periodic review process, However the compatibility determination (indicator finding) is done in conjunction with review, and MRB meeting. Rather that attempt to use a performance based approach to the regulatory requirement component of compatibility, the Commission should consider moving such reviews outside of the IMPEP process. This may also reduce the amount of time and resources need to perform a IMPEP review.

NRC has applied the H&S Category to certain regulatory requirements and considers these to be necessary for adequacy. Regulations should not be designated as H&S as the only mechanism the states have to implement such H&S elements is by legally binding requirements, not by Agreement State policies and procedures. Also, the Commission has consistently used Compatibility C designation for Agreement State program elements (other than regulations).

Such items should be designated as Compatibility H&S. Compatibility A, B and C should apply only to regulations, and H&S should be limited to Agreement State program elements other than regulations. This scheme would eliminate the current notion that there are compatibility items that are needed for adequacy.

Thank you for the opportunity to comment. If you have any questions, please contact me or Robert Dansereau at: 518-402-7550.

Sincerely,

/S/

Stephen M. Gavitt, Director
Bureau of Environmental Radiation Protection

RulemakingComments Resource

From: Stephen M. Gavitt <smg03@health.state.ny.us>
Sent: Monday, September 16, 2013 5:08 PM
To: RulemakingComments Resource
Cc: Adela Salame-Alfie; Robert E. Dansereau; cboyd@health.nyc.gov
Subject: Docket ID NRC-2013-0081
Attachments: Adequacy-compatibility-comments.doc

Please find our comments on the draft revisions to the "Policy Statement on Adequacy and Compatibility of Agreement State Programs".

(See attached file: Adequacy-compatibility-comments.doc)

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