

COMMENTS ON STP-03-010

**DRAFT REVISION OF STP PROCEDURE SA-201:
REVIEW OF STATE REGULATORY REQUIREMENTS**

STATE	YES/DATE	NO
ALABAMA		
ARIZONA		
ARKANSAS		
CALIFORNIA		
COLORADO		
FLORIDA		
GEORGIA		
IOWA	3/5/03 Yes	
ILLINOIS	2/27/03 Yes	
KANSAS	3/3/03 Yes	
KENTUCKY		
LOUISIANA		
MAINE		
MARYLAND		
MASSACHUSETTS	3/13/03 Yes	
MISSISSIPPI		
NEBRASKA	3/6/03 Yes	
NEVADA		
NEW HAMPSHIRE		
NEW MEXICO		
NYS DOH		
NY DOL		
NY DEC		
NYC DOH		
NORTH CAROLINA		
NORTH DAKOTA		
OHIO		
OKLAHOMA		
OREGON		
RHODE ISLAND		
SOUTH CAROLINA		
TENNESSEE		
TEXAS		
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION		
UTAH		
WASHINGTON		
MINNESOTA		
PENNSYLVANIA		
WISCONSIN		

February 27, 2003

U.S. Nuclear Regulatory Commission
ATTN: John Zabko, STP
One White Flint North
11555 Rockville Pike, Third Floor
Rockville, MD 20852

Re: Draft Revision of STP Procedure SA-201, "Review of State Regulatory Requirements" (STP-03-010)

Dear Mr. Zabko:

The Illinois Department of Nuclear Safety hereby submits the following comment on the above-identified draft summary document. The document describes a revision to the procedures for reviewing proposed and final State regulations and expands the scope of the procedure to include review of other legally binding requirements such as license conditions and orders.

While we understand the NRC's desire to review legally binding requirements used by States to implement requirements similar to NRC regulations, the Department objects to submitting license conditions or Orders to NRC for review as "draft." License conditions and Orders are not the same as regulations. They are not circulated to licensees for comment prior to their use.

We see no need to delay the issuance of a license for up to 60 days while NRC reviews a license condition. In many cases, a license condition is used to cover one or two issues covered in NRC's regulations that are not yet covered in the state's regulations. If a state chooses to request "credit" for meeting a requirement identified in either the RATS (Regulation Action Tracking System) or SRS (State Regulation Status) with a license condition, then that condition should be submitted. However, we can foresee some situations where a license condition would not be submitted because of pending amendments to regulations that would supersede that license condition.

The issuance of Orders by a state is not a matter for NRC comment. States typically issue orders to correct a situation where there is an immediate threat to public health and safety, not to be compatible with NRC regulations. In addition, the Department would not want a "proposed" Order to be placed in ADAMS prior to issuance.

In conclusion, we understand NRC's desire to create a procedure for evaluating Orders or license conditions used to implement requirements equivalent to NRC regulations. However, since these other legally binding requirements are not promulgated like regulations, soliciting comments from NRC prior to amending a license or issuing an Order would cause unnecessary delays in issuing amendments or correcting a public health and safety issue. If the Department wishes to take "credit" for implementing a regulation via one of these other legally binding requirements, we will submit the final version to NRC under the procedure SA-201.

Thank you for the opportunity to comment on the draft revision to the procedure for reviewing state regulatory requirements. My telephone number is 217-785-9931 and my e-mail address is k_allen@idns.state.il.us if you have questions or comments.

Sincerely,

Kathy Allen
Senior Project Manager
Office of Radiation Safety

cc: Jim Lynch, NRC Region III

From: <TConley@kdhe.state.ks.us>
To: <jgz@nrc.gov>
Date: Mon, Mar 3, 2003 10:21 AM
Subject: Draft Revision of STP Procedure SA-201, "Review of State Regulatory Requirements" (STP**603**6010)

The Kansas Radiation Control Program hereby submits the following comment on the above-identified draft summary document. The document describes a revision to the procedures for reviewing proposed and final State regulations and expands the scope of the procedure to include review of other legally binding requirements such as license conditions and orders.

While we understand the NRC's desire to review legally binding requirements used by States to implement requirements similar to NRC regulations, the Department objects to submitting license conditions or Orders to NRC for review as "draft." License conditions and Orders are not the same as regulations. They are not circulated to licensees for comment prior to their use.

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Thank you for the opportunity to comment on the draft revision to the procedure for reviewing state regulatory requirements. My telephone number is 785-296-1565 and my e-mail address is tconley@kdhe.state.ks.us if you have questions or comments.

Sincerely,



STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR

DEPARTMENT OF PUBLIC HEALTH
JANE COLACECCHI, INTERIM DIRECTOR

SALLY J. PEDERSON
LT. GOVERNOR

March 5, 2003

John Zabko
State and Tribal Programs
US Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike, Third Floor
Rockville, MD 20852

Subject: COMMENTS ON DRAFT REVISION OF SA-201

The Iowa Department of Public Health (IDPH) agrees with the comments submitted by Kathy Allen of the Illinois Department of Nuclear Safety. IDPH strenuously objects to the US Nuclear Regulatory Commission's attempt to control the license conditions and the enforcement actions of Agreement States.

In the first case, the NRC's philosophy regarding license conditions differs from Iowa's. The NRC tends to repeat rules in its licenses. In addition, the license conditions used by the IDPH reflect requirements established in Iowa's regulatory program. Those requirements may well differ from the NRC. A case in point is the requirement to have a physicist, oncologist and cardiologist present during intravascular brachytherapy. The NRC has, in Iowa's opinion, compromised health and safety by relaxing that requirement and allowing only two of the team members to be present. The difference in philosophy is enforced by license condition.

Orders issued by an Agreement State are by their very nature time sensitive. In fact, if they were not, there would be no reason to have anything other than standard license conditions. Requiring an NRC review would totally negate the impact of an Order by causing significant delays. In addition, because Iowa and other Agreement States issue orders appropriate to each situation, the NRC would inevitably need documentation of the circumstances surrounding the Order. This would not only be intrusive but would cause additional burden on Agreement State and NRC staffs.

If you have any questions concerning this matter, please contact me.

Sincerely,

Donald A. Flater, Chief
Bureau of Radiological Health
Iowa Department of Public Health
(515) 281-3478
dflater@idph.state.ia.us

03 MAR 11 AM 9:00
STP

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DEAF RELAY (HEARING OR SPEECH IMPAIRED) 1-800-735-2942 / INTERNET: [HTTP://WWW.IDPH.STATE.IA.US/](http://www.idph.state.ia.us/)

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FAX/515-281-4529

DIV. OF HEALTH PROMOTION, PREVENTION & ADDICTIVE BEHAVIORS
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DIV. OF TOBACCO USE PREVENTION & CONTROL
515-281-6225
FAX/515-281-6475

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



STATE OF NEBRASKA

MIKE JOHANNIS, GOVERNOR

March 6, 2003

U.S. Nuclear Regulatory Commission
ATTN: John Zabko, STP
One White Flint North
11555 Rockville Pike, Third Floor
Rockville, MD 20852

Re: Draft Revision of STP Procedure SA-201, "Review of State Regulatory Requirements"
(STP-03-010)

Dear Mr. Zabko:

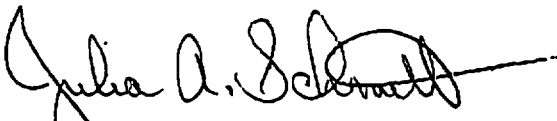
Thank you for the opportunity to comment on the proposed changes to the Draft Revision of STP Procedure SA-201, "Review of State Regulatory Requirements" (STP-03-010).

The Nebraska Department of Health and Human Services Regulation and Licensure objects to Item V.A.4. in the draft of SA-201, which would require states to submit legally binding requirements and license conditions in draft form to the NRC for review. This could delay the issuance of licenses for up to 60 days. If the Department intends to use legally binding requirements or license conditions to meet compatibility requirements, we will submit them in final form as they are implemented.

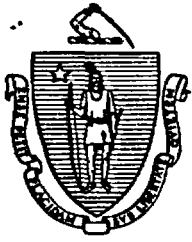
Neb. Rev. Stat. 71-3513 (6) states, "Whenever the department finds that an emergency exists with respect to radiation requiring immediate action to protect occupational or public health and safety or the environment, the department may, without notice, hearing, or submission to the coordinator, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of the Radiation Control Act, such regulations or order shall be effective immediately." In the case of an emergency, the Department will not submit regulations or orders for review prior to implementation, irrespective of whether they may ultimately be used to meet a compatibility requirement.

If you have any questions, please contact me (402)471-0528 or julia.schmitt@hhss.state.ne.us.

Sincerely,



Julia A. Schmitt, Manager
Radiation Control Programs



MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

RONALD PRESTON
SECRETARY

CHRISTINE C. FERGUSON
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Radiation Control Program
174 Portland Street 5th Floor, Boston, MA 02114
(617) 727-6214 (617) 727-2098 - Fax

March 13, 2003

U.S. Nuclear Regulatory Commission
ATTN: John Zabko, STP
One White Flint North
11555 Rockville Pike, Third Floor
Rockville, MD 20852

Re: Draft Revision of STP Procedure SA-201, "Review of State Regulatory Requirements"
(STP-03-010)

Dear Mr. Zabko:

Massachusetts Department of Public Health Radiation Control Program hereby submits the following comment on the above-identified draft summary document. The document describes a revision to the procedures for reviewing proposed and final State regulations and expands the scope of the procedure to include review of other legally binding requirements such as license conditions and orders.

Massachusetts is a recent Agreement State (March 1997) so we still remember the terms of the Agreement. We would like to quote a small section of the "Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials" in the Federal Register Vol. 61. No. 249 / Thursday, December 26, 1996: 68067.

"(b) Legislation and regulations. The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders."

The legal ability to do as quoted is very important to our program(s) and once upon a time the NRC seemed to recognize that. Indeed, as recently as in January and February 2003, we responded to the following message from NRC, which recognizes the above referenced authority:

All Agreement States Program Directors:

On January 31, 2003 I requested information about your authority to issue immediately effective orders or other immediately effective legally binding requirements. Based on the responses we received, I wish to re-state the request with a more specific focus. Your responses are important to our considerations on any additional security measures for materials licensees other than panoramic irradiators and portable gauge users.

Please consult with your program's legal advisor if necessary. We would appreciate a response within one week to the following questions:*

- (1) Does your program have the authority to impose new requirements (not in the current rules) as a matter of health and safety by adding a license condition to an existing license?
- (2) If so, does your program have the authority to add the license condition as an administrative action that you initiate, that is, without your receiving a request from the licensee or your finding that an emergency exists?
- (3) If so, what is the shortest period of time required to amend a license (presuming the amendment wording is developed beforehand)?
- (4) Does the amendment become effective immediately when you issue it?
- (5) If not, what is the shortest period of time until the amendment can become effective?
- (6) If the licensee requests a hearing, is the amendment in effect before the hearing is held?

Thanks,

Paul H. Lohaus, Director
Office of State and Tribal Programs
PHL@NRC.GOV
301-415-3340

While we understand the NRC's desire to review legally binding requirements used by States to implement requirements similar to NRC regulations, the Department objects to submitting license conditions or Orders to NRC for review as "draft." License conditions and Orders are not the same as regulations. They are not circulated to licensees for comment prior to their use. We see no need to delay the issuance of a license for up to 60 days while NRC reviews a license condition. In many cases, a license condition is used to cover one or two issues covered in NRC's regulations that are not yet covered in the state's regulations. If a state chooses to request "credit" for meeting a requirement identified in either the RATS (Regulation Action Tracking System) or SRS (State Regulation Status) with a license condition, then that condition should be reviewed at IMPEP or discussed during the annual non-IMPEP meeting.

The issuance of Orders by a state is not a matter for NRC comment. States typically issue orders to correct a situation where there is an immediate threat to public health and safety or remove an unnecessary restriction implied in existing regulations, not to be compatible with NRC regulations. In addition, the Department would not want a "proposed" Order to be placed in ADAMS prior to issuance.

In conclusion, we understand NRC's desire to create a procedure for evaluating Orders or license conditions used to implement requirements equivalent to NRC regulations. However, since these other legally binding requirements are not promulgated like regulations, soliciting comments from NRC prior to amending a license or issuing an Order would cause unnecessary delays in issuing amendments or correcting a public health and safety issue.

Thank you for the opportunity to comment on the draft revision to the procedure for reviewing state regulatory requirements. My telephone number is (617) 727-6214 and my e-mail address is salifu.dakubu@state.ma.us if you have questions or comments.

Sincerely,

 Salifu Dakubu

Supervisor, Materials Program

MA Radiation Control Program

cc: Duncan White, NRC Region I