

Michigan and the U.S. Nuclear Regulatory Commission Agreement State Program
Agreement State Advisory Committee
Library of Michigan - Lake Superior Room
May 28, 2008

MEETING SUMMARY

1. Welcome and Introductions

Thor Strong, Chief of the Radiological Protection Section, Department of Environmental Quality (DEQ), welcomed the participants and had the participants introduce themselves.

He noted that the focus of this meeting was to review proposed changes to the current draft revision to Part 135 of the Public Health Code, to share the status of the draft legislation, and to discuss the rulemaking process with a focus on the draft Part J "Notices, Instructions and Reports to Workers; Inspections" that we had sent to the committee members for their review.

2. Program Status Reports

Legislation

Bruce Matkovich, Radiation Safety Section Manager, Department of Community Health (DCH), stated that both DCH and DEQ support the legislation and the merger of the two programs into DCH. The draft legislation, which the Committee had reviewed last summer, would make state law more consistent with national mammography standards, and add provisions needed for the State to become an Agreement State. The draft legislation also includes a provision for the establishment of an interim fee to finance program startup costs. However, due to Michigan's slow economy and the governor's commitment to "no new fees" in her January 2008 State-of-the State speech, the revisions to the statute have not moved outside of DCH.

Bruce highlighted several minor proposed changes to the draft statute, such as removing the authority to enter into an agreement in Section 13511 since Public Act 54 of 1965 already authorizes an agreement, and updating the American College of Radiology mammography accreditation program reference in Section 13523 to April 2008.

A member asked if the legislation could be moved forward if the section establishing the interim fee was removed. DCH will consider this option.

A member requested an electronic copy of the most recent draft of the statute amendments.

Funding

Since the governor and legislature are not supporting new programs funded by fees, the DCH and DEQ are evaluating alternate funding. This fiscal year, the legislature replaced the fees collected by several DEQ programs with general funds. DEQ and DCH staff hope to evaluate the potential for using General Funds, rather than an interim fee, to fund startup costs.

Committee members had a number of questions about the impact of the budget on the strategy and timeline for pursuing the NRC Agreement. The four-year program implementation plan presented last year is contingent on the establishment of interim fees. If another funding approach is used, the timeframe may be modified. One committee member expressed concern that new staff might be hired and then left stranded with no funding. Mr. Strong stated that no new staff would be hired until a stable funding commitment was secured. DEQ and DCH staffs are considering the option of training DCH x-ray inspectors to inspect certain nuclear medicine operations that are co-located with the x-ray facility they are inspecting. One committee member recommended that we ensure that U.S. Nuclear Regulatory Commission (NRC) would approve such an approach.

Training

Since January, the NRC has been paying for the transportation, lodging, per diem, and tuition for state employees to attend NRC-sponsored training. The three staff in the Radioactive Materials Unit have attended five of these classes. DCH staff may be attending some classes such as the "Inspection Procedures" and the "Nuclear Medicine" classes.

3. Presentation on the Rulemaking Process

John Ferris is now the DCH rules specialist. This work has been added to his normal work of inspecting x-ray and mammography machines. John gave a PowerPoint presentation describing the State Office of Administrative Hearings and Rules (SOAHR) process for the promulgation of administrative rules.

Both DCH and DEQ have submitted a "Request for Rulemaking" (RFR). The RFRs represent an official notice of the Departments' intent to revise the "Ionizing Radiation Rules" (IRR). The RFRs have been accepted by SOAHR and are available on the SOAHR website. Therefore, we now can distribute draft rules for discussion.

4. Rules Revision

Overall Strategy

Stakeholders have consistently urged the state to revise the IRR, whether or not the state pursues an NRC Agreement. Mr. Strong reminded Committee members of last year's discussion over whether to adopt NRC regulations or to work toward a consistent and comprehensive set of state rules using the Conference of Radiation Control Program Directors' "Suggested State Regulations" (SSRs) as the starting point. Staff decided to use Part J (Notices, Instructions, and Reports to Workers; Inspections) of the SSRs as a starting point and "trial balloon". The staff's revised draft of Part J had been distributed to the Committee in April for review and comment. A few written comments had been received. He commented that the "red-line, strike-out" version may appear to be a significant revision, but that the overall scope and intent of the language is unchanged. He stated that staff made a concerted effort to provide rationale for all of the proposed changes and specifically highlight any instance where a new requirement beyond the scope of NRC's Part 19 (the comparable NRC regulation) was being proposed.

Mr. Strong stated that the staff's key goals for the discussion to follow would be to determine whether our general approach with Part J was on the right track and acceptable to

committee members, and to determine a process for continued involvement and interaction with stakeholders as we moved forward with rules revisions.

One committee member reminded the Committee that an earlier Stakeholder Work Group had recommended that the state adopt the NRC regulations (10 CFR) by reference. Another committee member shared that the NRC is often looking to the Agreement States for guidance in developing new regulations. Other committee members commented that use of the SSRs as the framework for state rules was acceptable, but cautioned us to not add further regulatory requirements beyond the federal regulations unless there was a clear health and safety benefit to doing so.

Discussion on Part J

Bob Skowronek, Chief of the Radioactive Material Unit, led the discussion on Part J.

He explained that the DCH/DEQ work group had carefully reviewed Part J along with the corresponding parts of 10 CFR 19 and the rules of other states. The Michigan Legislative Services Bureau has “A Manual of Style and Procedures” to be used when drafting administrative rules. We have modified the wording of the draft rules to meet the requirements in this manual and other “plain language in government” principles.

Staff and committee members discussed each rule. Some significant discussions centered on:

- Rule J.11, “Posting of Notices to Workers,” where general agreement was reached that the rule could be reworded to eliminate the “practicable” versus “practical” conundrum.
- Rule J.11, “Posting of Notices to Workers,” about whether or not the NRC would allow electronic “posting” instead of requiring the paper documents to be posted. The statement by a committee member that “the only people who look at the postings are the RSO and the inspector” brought a round of laughter.
- Rule J.12, “Instructions to Workers” to require the licensee or registrant to maintain training records but to eliminate any requirement for signed statements from the employees that they received the training.
- Rule J.13, “Notification and Reports to Individuals,” about whether or not the NRC would allow electronic notifications and reports instead of requiring paper documents.
- Rule J.13, “Notification and Reports to Individuals.” Committee members liked the idea that a unique identification number could be used on notifications and reports instead of the social security number, but did not want additional information about the licensee to be required on such reports.
- Rule J.20, “Employee Protection.” Should the proposed wording describing “protected activities” be removed from the rule?
- Staff will look at the words employee, individual, person, and worker in Part J to verify the appropriate word is used.

5. General Comments and Next Steps

- Committee members were generally complimentary of staff’s approach to the draft rules presentation; they appreciated receiving a redline-strikethrough version of the draft rules as well as a clean version with all changes accepted. They also liked the explanations of the proposed changes and the readability of the draft rules.

- Staff will consider the comments received and today's discussion and prepare a new draft of Part J. This draft will be sent to the committee and put on the Agreement State website (<http://www.michigan.gov/agreementstate>) for general comment. A notice will be e-mailed to those on the x-ray email listserve and to those on the RAM e-mail list.
- A draft of Part A, "General Provisions," (without any definitions) is almost ready for distribution to the committee. Staff will then work on Part D, "Standards for Protection Against Radiation." DCH staff has been working on sections of the rules unique to the x-ray and mammography program.
- In response to a question posed by Mr. Strong about whether additional representation was needed on the committee, one committee member commented that the committee was now more representative of the broad licensee community than it had been. Another commented that there was a need to ensure that representatives from specific licensee categories are involved in the review of rules that pertain specifically to them – e.g., well-logging.
- The next committee meeting should be in 3 or 4 months. We will forward Part A (without the definitions) and a portion of Part D for discussion at the next meeting.

ATTENDEES:

STAFF:

Thor Strong, DEQ
 Robert Skowronek, DEQ
 T.R. Wentworth, DEQ
 Bruce Matkovich, DCH
 Don Parry, DCH
 John Ferris, DCH
 Darryl Horton, DCH

COMMITTEE MEMBERS:

Alan Jackson, Henry Ford Health Systems
 Ralph Lieto, St. Joseph Mercy Health
 Thomas Kumpuris, Medical Physics Consultants
 James Botti, Medical Physics Consultants
 John Merrill, Consumers Energy
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