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Statement of Principles and Policy for the Agreement State Program

PURPOSE:

The purpose of this Statement of Principles and Policy for the Agreement State Program is to clearly describe the respective roles and responsibilities of the NRC and States in the administration of programs carried out under Section 274 of the AEA of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of nuclear materials.

This Policy Statement addresses the Federal-State interaction under the AEA: 1) to establish and maintain agreements with States under Section 274b. that provide for discontinuance¹ by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of byproduct, source, and small quantities of special nuclear material; and 2) ensure that post-agreement interactions among the NRC and Agreement State radiation control programs are coordinated, compatible and that Agreement State programs, and continue to provide adequate protection of public health and safety.

Section 274 of the AEA provides for a special Federal-State regulatory framework for the control of byproduct, source, and small quantities of special nuclear material as identified by Section 274b. of the AEA. The NRC, by agreement with a State, discontinues its authority under Section 274 of the AEA over practices involving some or all of these materials. The material over which the State receives regulatory authority under such agreements is hereinafter termed "agreement material."

The NRC and Agreement State radiation control programs maintain regulatory oversight for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of nuclear materials as an integral part of their health and safety mission as it relates to minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes these enhanced security measures.

This Policy Statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and that should be achieved in the administration of these programs.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

¹ Other NRC documents have used the term "relinquish" rather than "discontinue" of regulatory authority. Since both terms are essentially the same, either term can be used to describe NRC discontinuance of regulatory authority under a Section 247b. Agreement.

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STATEMENT OF LEGISLATIVE INTENT:

The AEA did not initially specify a role for the States in regulating the use of nuclear materials. Many States were concerned as to what their responsibilities in this area might be and expressed interest in seeing that the boundaries of Federal and State authority were clearly defined. This need for clarification was particularly important in view of the fact that although the Federal Government retained sole responsibility for protecting public health and safety from the radiation hazards of byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had been borne for many years by the States.

Consequently, in 1959 Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to discontinue its regulatory authority over the use of these materials and for assumption of this authority by the States. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, and the export and import of nuclear materials, and matters related to common defense and security.

In considering the legislation, Congress recognized that the Federal Government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the Commission to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the Commission would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

In order to relinquish/discontinue its authority to a particular State, the Commission must find that a particular State program is compatible with the Commission's program for the regulation of radioactive agreement materials and that the State program is adequate to protect public health and safety. In addition, the Commission has an obligation, pursuant to Section 274j. of the ActAEA, to periodically review existing Agreement State programs to ensure continued adequacy and compatibility. Section 274j. of the ActAEA provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Section 274j. In these cases, the Commission must offer the State reasonable notice and opportunity for a hearing. In addition, the Commission may temporarily suspend all or part of an agreement in the case of an emergency situation.

A. ~~C.~~ Principles of Program Implementation and Program Assessment

The NRC is responsible to ensure that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of agreement material. The basic elements of such regulatory programs include principles of good regulation in program administration and the ability to assess program performance on a consistent and systematic basis; the ability to ensure adequate protection of public health and safety including security of these nuclear materials; compatibility in areas of national interest; and sufficient

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flexibility to accommodate local needs and conditions. Each of these elements is reflected and addressed in specific sections of this Policy Statement.

1. Good Regulation Principles

In 1991, the Commission adopted "Principles of Good ~~Regulation~~"Regulation" to serve as a guide to both agency decision making and to individual behavior as NRC employees. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, appropriate, and consistent. The "Principles of Good ~~Regulation~~"Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The Commission believes that the NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The Commission further believes that such principles may be useful as a part of a common culture that the NRC and the Agreement States share as co-regulators. Accordingly, the Commission encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program.

Regulatory decisions and actions should be developed and implemented in an open and publicly credible manner and should be able to withstand scrutiny. Such scrutiny should be welcomed by the regulator. The regulator should be independent and impartial in its actions, and this should be clearly evident. Regulations and regulatory decisions should be based on assessments of the best available information from affected and interested individuals and organizations, as well as on the best available knowledge from research and operational experience. Significant decisions, for example, a change in enforcement policy, should be documented explaining the rationale for such decisions. The public should have an opportunity for early involvement in significant regulatory program decisions. Where several effective alternatives are available, the alternative that best assures safety while considering differing views should be adopted, considering the resources needed to implement that alternative. Regulations should be necessary, and appropriate, to assure safety, and should be clear, coherent, logical, and practical. Regulatory actions should be fully consistent with regulations or other legally binding requirements and good public policy and should lead to stability and predictability in the planning and implementation of radiation control programs.

Failure to adhere to these principles of good regulation in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. All involved should welcome expressions of concern that indicate a program may not be operating in accordance with these principles and revise their program to more completely reflect these principles.

It is not intended that these principles of good regulation be established as formal criteria against which the NRC and Agreement State programs would be assessed. Rather, the expectation is that these principles will be incorporated into the day-to-day operational fabric of the NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that Government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of NRC and Agreement State materials program managers and staff in the self assessment of their respective programs and to use in the establishment of goals and objectives for the continual improvement of their respective programs. Deficiencies identified during the conduct of NRC Region and Agreement State

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formal program performance reviews may indicate that the program is not adhering to these principles of good regulation. The organization being assessed should factor the need for these principles into its actions to address identified deficiencies.

~~2. Coherent Nationwide Effort~~

~~The mission of the NRC is to assure that civilian use of nuclear materials in the United States is carried out with adequate protection of public health and safety. NRC acknowledges its responsibility, shared with the Agreement States, to ensure that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of AEA materials. The basic elements of such regulatory programs include ability to ensure adequate protection of public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, ability to assess program performance on a consistent and systematic basis, and principles of good regulation in program administration.~~

~~Each of these elements is reflected and addressed in specific sections of this Policy Statement.~~

~~3.~~ **2. Adequate to Protect Public Health and Safety**

The NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs controlling the ~~use~~ **safe and secure use** of ~~AEA~~ **Agreement** materials. Accordingly, ~~the~~ NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety. ~~In addition, the NRC and Agreement States expect individuals and organizations performing regulated activities involving nuclear materials to promote, establish, and maintain a positive safety culture.~~

~~4.~~ **3. Compatible in Areas of National Interest**

The NRC and the Agreement States have the responsibility to ensure that consistent and compatible radiation control programs are administered. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should ~~be~~ not only ~~be~~ effective and cooperatively implemented by ~~the~~ NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services, ~~enhanced security of nuclear materials,~~ and safety reviews for ~~the manufacture and distribution of sealed sources~~ **sources** and devices ~~sold nationwide~~. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of ~~the~~ NRC and each Agreement State to evaluate the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety.

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4. Flexibility

With the exception of those compatibility areas where all programs should be essentially identical, to the extent possible, Agreement State radiation control programs for ~~AEA~~Agreement materials should be provided with flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. However, the exercise of such flexibility should not preclude, or effectively preclude, a practice authorized by the ~~AEA~~, and in the national interest. That is, a State would have the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequacy are still met and compatibility is maintained, and the more stringent requirements do not preclude or effectively preclude a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

B. ~~D.~~ New Agreements

Section 274 of the ~~Atomic Energy Act~~AEA requires that once a decision to ~~seek~~request Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed agreement. This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the *Federal Register* to provide an opportunity for public comment. After consideration of public comments, if the Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

C. ~~E.~~ Program Assistance

The NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into agreements and to help them prior to the assumption of regulatory authority. Following assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC ~~can~~may provide training opportunities and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. The NRC ~~would~~may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and limited enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC, ~~the or other~~ Agreement States, they are encouraged to do so. In addition, the NRC and Agreement States will keep each other informed about relevant aspects of their programs. The NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. Agreement States should provide a similar opportunity to the NRC to make it aware

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of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

If an Agreement State experiences difficulty in program administration, the Commission would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the State's ability to discharge its responsibility to continue to ensure adequate protection of public health and safety.

D. ~~F.~~ Performance Evaluation

Under Section 274 of the AEA, as amended, the Commission retains authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, the NRC will ~~provide oversight~~ ~~evaluate~~ Agreement State radiation control programs to ~~ensure~~ ~~determine~~ that they are adequate and compatible prior to entrance into a Section 274b. agreement and ~~that ensure~~ they continue to be adequate and compatible after an agreement is effective.

The Commission, in cooperation with the Agreement States, ~~will establish~~ ~~established~~ and ~~implement~~ ~~implemented~~ the IMPEP. The IMPEP is a performance evaluation ~~program to~~ ~~provide~~ ~~process that provides~~ the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement. ~~Performance indicators are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program. The IMPEP process employs a Management Review Board (MRB), composed of senior NRC managers and an Agreement State Liaison to make a determination of program adequacy and compatibility.~~

As a part of ~~this~~ ~~the~~ performance evaluation process, the Commission will take any necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include: ~~(1) Periodic assessments more frequent~~ ~~IMPEP reviews of Agreement State radiation control programs against established review criteria;~~ ~~(2) and~~ provision of assistance to help address weaknesses or areas needing improvement within an Agreement State ~~radiation control program requiring improvement, to the extent permitted by NRC resources;~~ ~~(3) placing a State on a probationary status for serious program deficiencies that require heightened~~ ~~Enhanced oversight;~~ ~~(4) temporary, suspension of an agreement and reassertion of NRC regulatory authority in an emergency if an Agreement State program experiences any immediate program difficulties preventing the State from continuing to ensure adequate protection of public health and safety; and~~ ~~(5) suspension, or termination of an agreement and reassertion of NRC regulatory authority if the Agreement State program experiences difficulties that jeopardize the State's ability to continue to ensure adequate protection of public health and safety may be considered for serious program deficiencies or to continue to maintain a compatible program emergencies.~~ The ~~basis for~~ NRC's actions will be based on a well defined and predictable process and a performance evaluation program that will be consistently and fairly applied.

E. ~~G.~~ Levels of Agreement State Program Review Findings

The following discussion outlines the nature of ~~the~~ NRC findings regarding the NRC's Agreement State review process.

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1. Adequacy

Finding 1--Adequate To Protect Public Health and Safety and (or not) Compatible

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If the NRC finds that ~~a State program has met all of the an~~ Agreement State program has met all of the review criteria or that only minor deficiencies exist, the ~~Commission~~NRC would find that the Agreement State's program is adequate to protect public health and safety. ~~If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.~~

Finding 2--Adequate, but Needs To Protect Public Health and Safety with Improvement and (or not) Compatible Needed

If the NRC finds that an Agreement State program protects public health and safety, but is deficient in meeting some of the review criteria, the NRC may find that the Agreement State's program is adequate, ~~but needs with improvement needed~~. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, the NRC may also find that the program is adequate ~~but in need of with improvement needed~~.

Finding 3--Not Adequate to Protect Public Health and Safety

If the NRC finds that an Agreement State program is significantly deficient in some or all of the review criteria, the NRC would find that the Agreement State's program is not adequate to protect public health and safety.

2. Compatibility

Finding 1--Compatible

If the NRC determines that ~~an~~ Agreement State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. ~~If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.~~

Finding 3--Inadequate to Protect Public Health and Safety and (or not) 2--Not Compatible

~~If the NRC finds that a State program is significantly deficient in some or all of the review criteria, the NRC would find that the State's program is not adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that an Agreement State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States (i.e., creates conflicts, gaps, or duplication in regulation), the program would be found not compatible.~~

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F. NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above findings. The appropriate action will be determined on a case-by-case basis by ~~NRC management.~~

Letters

~~In all cases, subsequent~~the MRB. Subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management. ~~In the event that~~

If the NRC finds that a State program is adequate and compatible, no further action would be required, except a response by the State to any ~~suggestions or recommendations.~~ ~~In the case where minor deficiencies are noted or areas for improvement are identified, the State would be requested to describe their proposed corrective action. If the corrective action appears appropriate, no further NRC action is required. If additional clarification of the corrective actions is needed, additional correspondence may be necessary.~~ recommendations.

Follow-up Reviews

~~In the event that deficiencies~~ If serious performance issues are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting ~~program deficiencies. If, during follow-up reviews, it is shown that the State has taken corrective actions, a letter finding the State adequate and compatible would be provided~~ those issues. Circumstances that can lead to more frequent contact between the NRC and the Agreement State program include the following: identification of serious program deficiencies, previously identified deficiencies that have gone uncorrected for a significant period of time, and/or deficiencies in adopting required compatibility program elements.

Probationary Status

~~There are three circumstances that can lead to an adequate but needs improvement or incompatible State program being placed in a probationary status: (1) There are cases in which program deficiencies may be serious enough to require immediate heightened oversight; (2) in other cases, Agreement State program deficiencies previously identified may have been uncorrected for a significant period of time; and (3) if the NRC determines that a State program has been late in adopting required compatibility program elements and significant disruption in the collective nationwide efforts to regulate AEA materials has occurred. If the NRC was not confident that the State would address the program deficiencies in an expeditious and effective manner, the Commission would place the State program on probation.~~

~~As a result of placing a State program on probation~~ If findings of subsequent reviews show that the State has taken appropriate corrective actions and that these actions have shown a sustained improvement in performance, the MRB will determine whether the status of an Agreement State program may be moved to another level of oversight. If the MRB finds that all

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deficiencies have been corrected, it may determine that the Agreement State program is adequate and/or compatible.

Options to address serious performance issues include one or more of the following actions: monitoring, heightened oversight, probation, suspension, and termination.

1. Monitoring

Monitoring is an informal process that allows the NRC to maintain an increased level of communication with an Agreement State Program through periodic (usually bimonthly) calls between the NRC and State managers/staff. Monitoring is implemented in cases where weaknesses in a program have resulted in, or are likely to result in, less than satisfactory performance for one or more performance indicators. Monitoring may be considered based on results of a routine IMPEP review, a followup IMPEP review, a periodic meeting or other interaction with the Agreement State program. In cases where one or more performance indicators remain less than satisfactory or further degraded, the MRB will consider placing a State on Heightened Oversight.

2. Heightened Oversight

Heightened Oversight is a formalized process that allows the NRC to maintain an increased level of communication with an Agreement State usually through monthly calls between the NRC and State managers/staff. Heightened Oversight is implemented in cases where significant program weaknesses are identified, but are not determined to be serious enough to find the program inadequate to protect public health and safety. In addition to the monthly calls, a State placed on Heightened Oversight is required to submit a Program Improvement Plan describing actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The Program Improvement Plan allows the NRC to monitor the actions being taken and the implementation schedule for those actions that address the weaknesses identified based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program. If programmatic weaknesses are serious enough to find the program inadequate to protect public health and safety, or if weaknesses continue throughout the period of heightened oversight, the MRB may elect to make a recommendation to the Commission to place the Agreement State on probation.

3. Probation

Probation is a formalized process, requiring Commission approval and notification to the Agreement State's governor, which allows the NRC to maintain an increased level of communication with an Agreement State program. Probation is considered in cases where the State's program is found to be not adequate to protect public health and safety, or not compatible with the NRC's program. An Agreement State may also be placed on probation when it has not addressed previously identified program weaknesses. The process allows the NRC to monitor the actions being taken by the State to correct the identified weaknesses and the implementation schedule for those actions.

Probation would include all the requirements for Heightened Oversight previously described. In addition, the NRC would communicate its findings to a higher level of State management. ~~Notice~~Written notification of ~~such~~probationary status would ~~normally~~be ~~addressed~~sent to the Governor of the State. ~~Notice would also be~~, a notice published in the *Federal Register*. ~~A copy of the letter to the Governor would be placed in the Public Document Room, and a press release would be issued.~~ Notice would also be given to the State's

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Congressional delegation, the appropriate Congressional committee(s), and all Agreement and non-Agreement States.

~~Once a State program is placed on probation, the NRC would heighten its oversight of the program. This would include obtaining commitments from the State in the form of a management plan to describe actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The NRC would increase observation of State program activities under the agreement to assure adequate protection of public health and safety. If~~ If requested ~~and in accordance with terms agreed to by the parties, the NRC would consider providing,~~ the NRC may provide technical support for the maintenance of the regulatory program. The probationary period would ~~last for a specified period of time. This period would not~~ normally be ~~more than~~ one year, ~~but could be extended based on extenuating circumstances or less.~~ At the end of that time, if the State has not addressed the deficiencies, the NRC ~~would~~may extend the probationary period or institute suspension or termination proceedings.

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1.4. Suspension

Section 274j. of the AEA gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the AEA. In cases where ~~the Commission finds that~~ program deficiencies ~~related to either adequacy or compatibility~~ are such that the Commission must take action to protect public health and safety, or if the program has not complied with one or more of the requirements of Section 274 of the ActAEA, the Commission ~~would~~may suspend all or part of its agreement with the State. In cases where a State has failed to respond in an acceptable manner during the probationary period, suspension ~~would~~may be considered. ~~If the situation is not resolved, termination will be considered.~~

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the *Federal Register*. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j(2) of the ActAEA also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed ~~or is unable~~ to take necessary action within a reasonable time.

~~In cases where the Commission decides to suspend the agreement, the NRC would communicate its findings to a higher level of State management. The NRC would issue an order temporarily suspending all or part of the 274b. agreement and an order to State licensees notifying them of the temporary suspension of all or part of the 274b. agreement. Written notification of suspension would be sent to the Governor of the State, a notice published in the *Federal Register*, and a press release issued. Notice would also be given to the State's Congressional delegation, the appropriate Congressional committee(s), and all Agreement and non-Agreement States.~~

2.5. Termination

Section 274j. of the ~~Atomic Energy Act~~AEA gives the Commission authority to terminate ~~all or part of~~ its agreement with a State if such termination is required to protect public health and safety, ~~or~~ if the State program has not complied with one or more of the requirements of Section 274 of the ActAEA (e.g., is found to be not compatible with the Commission's program ~~for regulation of agreement materials~~), or by State request. When the Commission finds such significant program deficiencies, the Commission would institute ~~formal~~ proceedings to terminate its agreement with the State.

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination. ~~In cases where the State has requested termination of the agreement, notice and opportunity for a hearing are not necessary.~~

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Also, notice of the proposed termination will be published in the *Federal Register*. There may be cases where termination will be considered even though the State program has not been placed on probation.

G. ~~Program~~ Funding

Currently, Section 274 of the AEA does not allow ~~federal~~Federal funding for the administration of Agreement State radiation control programs. Section 274 of the AEA permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with the NRC, ~~however~~. However, it is the NRC policy not to fund the establishment of new Agreement State programs. Regarding training, given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC offers certain relevant training courses and notifies Agreement State personnel of their availability.

H. ~~Regulatory~~ Development

The NRC and Agreement States will cooperate in the development of both new and revised regulations and ~~policy~~polices. Agreement States will have early and substantive involvement in the development of new regulations affecting protection of public health and safety and of ~~new policy~~polices affecting administration of the Agreement State program. ~~Likewise, the~~The NRC expects to have the States provide it with early and substantive involvement in the development of newalso reviews Suggested State Regulations proposed by the Conference of Radiation Control Program Directors for compatibility. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources.

~~K.~~

I. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of ~~AEA~~Agreement materials to identify specific changes that should be considered based on experience or to further improve overall performance and effectiveness. The changes considered may include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

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