



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 22, 2016

COMMISSION VOTING RECORD

DECISION ITEM: SECY-15-0087

TITLE: AGREEMENT STATE PROGRAM POLICY STATEMENT AND
PROGRAM RECOMMENDATIONS

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 22, 2016.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", with a long horizontal flourish extending to the right.

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
OGC
EDO
PDR

VOTING SUMMARY – SECY-15-0087

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAIN</u>	<u>NOT PARTICIPATING</u>	<u>COMMENTS</u>	<u>DATE</u>
Chrm. Burns	X	X			X	01/19/16
Cmr. Svinicki	X	X			X	02/08/16
Cmr. Ostendorff	X	X			X	07/24/15
Cmr. Baran	X	X			X	08/27/15

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: SECY-15-0087: AGREEMENT STATE PROGRAM
POLICY STATEMENT AND RECOMMENDATION

Approved XX (in part) Disapproved XX (in part) Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____

Entered in STARS

Yes _____

No _____



Signature

19 January 2016

Date

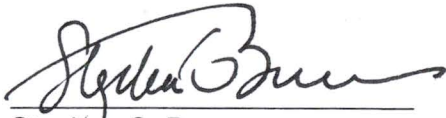
**Chairman Burns' Comments on SECY-15-0087:
Agreement State Program Policy Statement and Program Recommendations**

I commend the staff for its efforts to draft a single consolidated policy statement for the Agreement State program and to evaluate the approach for assessing Agreement State program compatibility and the metrics for the Integrated Materials Performance Evaluation Program (IMPEP). The Agreement States have a significant role in maintaining the success of our "National Materials Program" and, as such, I believe it is important to conduct assessments such as these to ensure that the Agreement State program continues to be successful.

I approve the staff's recommendation to publish the proposed consolidated Agreement State policy statement, subject to the attached edits, for public comment in the *Federal Register*.

With respect to the options presented by the staff to address the approach for determining Agreement State program compatibility, I approve Option 1.A and I disapprove Option 1.B. Under the staff's recommended Option 1.B the responsibilities of the Standing Committee on Compatibility would be expanded to include making recommendations on the period of time required for the Agreement States to adopt an NRC-proposed rule. I do not find it appropriate to "risk-inform" the time criteria to adopt regulations on a case-by-case basis as suggested by the staff. The current 3-year criteria is based on the fact that all regulations that must be adopted have been determined by the NRC to be necessary. Therefore, the implication is that these regulations should be adopted *as soon as practicable*, but *no later than* three years following NRC promulgation. The three-year "grace period" is not intended to be an indication of the level of safety or security significance of the regulation but an acknowledgement that there may be factors that limit an Agreement State's ability to adopt a regulation within a shorter timeframe. The staff's recommended Option 1.B would undermine this stance and would introduce an unnecessary level of complexity into the Agreement State program. Additionally, implementing Option 1.B would raise questions as to why a regulation should be adopted at all if its safety significance does not warrant that it be adopted as soon as practicable.

With respect to the options presented by the staff to address its evaluation of the IMPEP performance metrics, I approve Option 2.A and I disapprove Option 2.B. I approve Option 2.A in light of the concerns expressed by the Agreement States that the staff's proposed new criteria are less flexible and more restrictive than the current criteria. The feedback received from the Agreement States that IMPEP is a robust process that is not in need of change except for the need for more consistency in its implementation provides an acceptable basis for the staff's planned approach, under Option 2.A, to improve consistency with updates to IMPEP guidance and training.



Stephen G. Burns
19 January 2016

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2015-xxxx]

Policy Statement for the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on NRC's Agreement State Programs. The "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program" have been consolidated in a single policy statement. The resulting proposed policy statement has been revised to add that public health and safety includes physical protection of agreement material.¹

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

¹ The term 'agreement material' means the materials listed in Section 274b. of the Atomic Energy Act of 1954, as amended, over which the States may receive regulatory authority.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID <INSERT: NRC-20YY-XXXX>. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN 12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Dimmick, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: (301) 415-0694, e-mail: Lisa.Dimmick@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

- I. Obtaining Information and Submitting Comments.
- II. Background.
- III. Discussion of Proposed Changes.
- IV. Policy Statement for the Agreement State Program.

I. **Obtaining Information and Submitting Comments.**

A. Obtaining Information.

Please refer to Docket ID <INSERT: NRC-20YY-XXXX> when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID <INSERT: NRC-20YY-XXXX>.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, (301) 415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is publicly available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Commented [SGB1]: The treatment of ML numbers is inconsistent. Staff sometimes provides the ML number of a non-public document and other times it does not. If staff is going to always provide the ML number, then do not insert "publicly," but make sure to include the ML number for all documents, including the non-public documents. If staff is only going to provide the ML number for public documents, then include this edit and delete the ML numbers for the non-public documents that are provided.

B. Submitting Comments.

Please include Docket ID <INSERT: NRC-20YY-XXXX> in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background.

The "Adequacy and Compatibility of Agreement State Programs" (62 FR 46517; [September 3, 1997](#)) presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The "Statement of Principles and Policy for the Agreement State Program" (62 FR 46517; [September 3, 1997](#)) describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.² The application of these two policy statements has significant influence on the

² Section 274 of the Atomic Energy Act (Act), as amended, provides a statutory basis under which the NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with section 274b. of the Act.

safety and security of agreement materials and on regulation of the more than 22,000 Agreement State and NRC materials licensees.

In the 1990s, the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program" were developed by working groups consisting of Agreement States representatives and the NRC staff. A number of workshops and meetings were also held to gather stakeholder input. The Commission approved both policy statements in the Staff Requirements Memorandum (SRM) to SECY-95-112, "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," and SECY-95-115, "Final Statement of Principles and Policy for Agreement State Program," and "Procedures for Suspension and Termination of an Agreement State Program," dated June 29, 1995 (ADAMS Accession No. ML003759325), but deferred implementation until all implementing procedures were completed and approved by the Commission. In the June 30, 1997, the SRM to SECY-97-054, "Final Recommendations on Policy Statements and ~~implementing~~ Implementing Procedures ~~For~~for: 'Statement of Principles and Policy for the Agreement State Program' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs,'" the Commission approved the accompanying implementing procedures for the policy statements (ADAMS Accession No. ML051610710). The policy statements became effective on September 3, 1997 (62 FR 46517).

The NRC staff's efforts to update the Agreement State policy statements began with the Commission's direction issued in the SRM to SECY-10-0105, "Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device (RIN 3150-AI33)," on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and associated guidance documents to include both safety and source security considerations in the determination process. Because Agreement State adequacy and compatibility are key

components of the Integrated Materials Performance Evaluation Program (IMPEP),³ the Commission's ~~policy statement on the~~ "Statement of Principles and Policy for the Agreement State Program" was revised concurrently. The NRC staff's revisions to the policy statements added that public health and safety includes physical protection of agreement material.

The Commission approved publication of the proposed updates to the two policy statements in the revised SRM to SECY-12-0112, "Policy Statements on Agreement State Programs," dated May 28, 2013 (ADAMS Accession No. ML13148A352). The NRC staff published the two proposed policy statements on June 3, 2013 (78 FR 33122), for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118; August 16, 2013). The NRC held two public meetings (July 18 and August 6, 2013), and a topical session during the OAS annual meeting in Reno, Nevada on August 28, 2013. The NRC staff specifically solicited comment on Compatibility Category B, and whether or not the policy statements should maintain the ~~1997~~ language from the 1997 "Policy Statement on Adequacy and Compatibility of Agreement State Programs" in the policy statement describing the adoption and number of compatible regulations ~~from the "Policy Statement on Adequacy and Compatibility of Agreement State Programs."~~

The NRC staff received 51 comments on the policy statements, in general, and 45 comments on Compatibility Category B from 13 commenters, including Agreement States, industry organizations, and individuals. Consistency and flexibility were underlying themes expressed in the comments. The need for consistent application of the NRC's policies and flexible implementation of these policies were mentioned in written comments, and were also expressed orally during the public meetings and OAS topical session. The NRC changed the

³ The NRC developed the IMPEP to evaluate the adequacy and compatibility of Agreement State programs and the adequacy of the NRC's nuclear materials program activities.

policy statements as a result of the written comments and input from attendees to the two public meetings and the OAS topical session.

In COMSECY-14-0028, "Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward," dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY-14-0028, dated August 12, 2014 (ADAMS Accession No. ~~umber~~ ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the "Principles of Good Regulation" (ADAMS Accession No. ~~umber~~ ML15083A026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, "Policy Statement on Agreement State Programs," of this document.

III. Discussion of Proposed Changes.

The NRC's proposed consolidated policy statement addresses the Commission direction in the SRM to SECY-10-0105 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff's disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission's proposed consolidated policy removes details on IMPEP and the "Principles of Good Regulation" (~~ADAMS Accession No. ML15083A026~~). The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP) that defines the mission and roles and responsibilities of the NMP.

In response to the *Federal Register* notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy statement. In the FRN, the NRC specifically solicited comment on the following topics concerning Compatibility Category B:

1. *To clarify the meaning of a "significant transboundary implication,"⁴ the NRC is proposing to define a significant transboundary implication as "one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis." However, the NRC recognizes that the use of the word "particular" can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of "significant transboundary implication" and whether the word "particular" should be replaced with the phrase "significant and direct."*

Based on comments received, the NRC staff noted that there is a wide variation on the interpretation of the description of Compatibility Category B and of the definition of significant transboundary implication. In light of this, the Commission is proposing a new description of Compatibility Category B to eliminate the phrase "significant transboundary implication." The new language, i.e.g., "cross jurisdictional boundaries," embodies the original description of Compatibility Category B and eliminates the confusion surrounding the language incorporated into the 1997 version of the policy statement.

2. *Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the Policy Statement. The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders,*

⁴ The NRC staff solicited public comment on the phrase "significant ~~transboundary~~ transboundary implication" in the *Federal Register* on June 3, 2013 (78 FR 33122).

Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.

The majority of commenters requested that examples of program elements considered Compatibility Category B continue to be included in the description. No changes were made to the policy statement. The Commission retained examples in Section E.2.ii.

3. *The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundary implications, should be considered in the definition of significant transboundary implication.*

Specific comments were received regarding the consideration of the movement of goods and services. The majority of the commenters felt that it was not necessary to include the consideration of the movement of goods and services in the description of Compatibility Category B. ~~The Commission determined that this position was supported in the "Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device." In this rule, the Commission concluded that Agreement States should be allowed the flexibility to further enhance accountability programs, ultimately resulting in a change in compatibility for the rule from Compatibility Category B to Compatibility Category C. The Commission also concluded that "Reciprocity (i.e., reciprocal recognition of a radioactive materials license issued by another regulatory jurisdiction) has worked well for decades and has allowed the transfer, distribution, and servicing of radioactive material devices with no significant transboundary issues."~~ The Commission has concluded that the movement of goods and services should not be considered in assessing compatibility and made no change to the proposed policy statement.

4. *The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.*

The comments included two comments from industry representatives that differed on whether or not economic factors should be considered. In reviewing the comments received and in reviewing previous rationale on this topic as discussed in SECY-95-112 "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," the Commission determined that economic factors (i.e., those costs incurred by the regulated community to comply with regulatory requirement(s)) should not be considered. No change to the proposed policy statement has been made.

The NRC also solicited specific comment on the use of alternative wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. The 1997 version of the policy statement had specific text in three places regarding the expectation for adopting requirements in an identical manner to maintain compatibility. Six commenters supported returning the wording back to the text that was originally published in 1997. Based on comments received, the Commission retained the original language from the 1997 version in the proposed policy statement.

Two commenters questioned the description of Compatibility Category D and indicated the description in the policy statement as published in the Federal Register on June 3, 2013 (78 FR 33122) appears to discuss compatibility in general and does not describe Category D as it is defined in Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (See [http://pbdupws.nrc.gov/docs/ADAMS Accession No. ML0417/ML041770094.pdf](http://pbdupws.nrc.gov/docs/ADAMS/Accession%20No.%20ML0417/ML041770094.pdf)). The Commission agreed and moved the language listed under

Compatibility Category D, in the proposed policy statement, to the introductory paragraph of Section E.2., "Compatibility," and revised the description of Compatibility Category D in Section E.2.iv.

The criteria for adequacy and compatibility as proposed in this policy statement will provide Agreement States with flexibility in the administration of their individual programs. Recognizing that Agreement States have responsibilities for radiation sources other than agreement materials, this proposed policy statement would allow Agreement States to fashion their programs so as to reflect specific State needs and preferences while accomplishing a compatible national program consistent with Section 274 of the Atomic Energy Act of 1954, as amended.

The requirements in ~~compatibility~~ Compatibility categories Categories A, B, and C will allow the NRC to ensure that an orderly pattern for the regulation of agreement materials exists nationwide. The NRC believes that this approach achieves a proper balance between the Agreement States' need for flexibility and the need for coherent and compatible regulation of agreement material across the country.

IV. Proposed Policy Statement for the Agreement State Program.

A. PURPOSE.

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).⁵ The purpose of this policy statement is also to present the NRC's policy for determining the adequacy and compatibility of Agreement State

⁵ Section 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC relinquishes and the State assumes regulatory authority over some or all of these materials. The material over which the State receives regulatory authority under such agreement is termed "agreement material."

programs. Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of ~~byproduct, source, and quantities of special nuclear material insufficient to form a critical mass~~agreement material. This policy statement supersedes the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program."

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Section 274b. that provide for discontinuance 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 quantities of special nuclear material insufficient to form a critical mass~~agreement material; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and maintain programs that are compatible with the NRC's regulatory programNational Materials Program (NMP).

Although not defined in the AEA, the National Materials Program (NMP) is a term used to describe the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement materials. The mission of the NMP is to provide a coherent national system for the regulation of agreement materials with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are based on their legislative authority, program needs and expertise as they carry out their respective programs. ~~The NMP also serves as a mechanism for participation and involvement by two~~ Two national organizations—

~~the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD)—which~~ which are composed of State radiation protection programs, ~~the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD) also play important roles within the NMP.~~

B. BACKGROUND.

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the Agreement State Program~~NMP~~. 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, nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

~~This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs as part of the NMP.~~ This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs. The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274. Subsection 274d. states that the NRC shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs

for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement materials as an integral part of their health and safety mission as it relates to controlling and 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 physical protection of agreement material.

C. STATEMENT OF LEGISLATIVE INTENT.

In 1954, 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 clearly defining the boundaries of Federal and State authority over nuclear material. 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 AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could relinquish regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of

certain facilities and activities including, nuclear reactors, quantities of special nuclear material sufficient to form a critical mass, 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 NRC to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the NRC 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 under their Agreement and to permit the NRC to discontinue its regulatory responsibilities in those areas.

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

D. PROGRAM IMPLEMENTATION.

1. Implementation of the NMP Agreement State Program is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement materials; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State preferences.

i. Principles of Good Regulation.

In 1991, the Commission adopted the "Principles of Good Regulation" to serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, and are appropriate and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles may be useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP ~~and individual NRC and Agreement State materials programs.~~

ii. Performance Assessment.

To ensure that Agreement State programs ~~under the NMP~~ continue to provide adequate protection of public health and safety and are compatible with the NRC's regulatory program, periodic program assessment is needed ~~to ensure that programs under the NMP continue to be~~

~~adequate and compatible~~. The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation 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.

iii. 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, including physical protection of 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.

iv. Compatible in Areas of National Interest.

The NRC and the Agreement States have the responsibility to ensure that the radiation control programs are compatible. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. ~~They~~ The programs should be effective and cooperatively implemented by the NRC and the Agreement States and also should provide uniformity and achieve common strategic outcomes in program areas having national significance.

Such areas of national significance include aspects of licensing, inspection and enforcement, response to incidents and allegations, ~~security of aggregated radioactive material listed in Appendix A of part 37 to Title 10 of the Code of Federal Regulations (10 CFR)~~, and safety reviews for the manufacture and distribution of sealed sources and devices. Furthermore, communication using a nationally accepted set of terms with common

understanding, ensuring an adequate level of protection of public health and safety that is consistent and stable across the nation, and evaluation of the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety are essential.

v. Flexibility.

With the exception of those compatibility areas where programs should be essentially identical, Agreement State radiation control programs have flexibility in program implementation and administration to accommodate individual State preferences, State legislative direction, and local needs and conditions. A State has the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequate protection of public health and safety are met and compatibility is maintained.

However, the exercise of such flexibility should not effectively preclude a practice authorized by the AEA, and in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

2. New Agreements.

Section 274 of the AEA requires that once a decision to 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 that would be 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, staffing plan, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the 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 NRC determines that the proposed State program is adequate for protection of public health and safety and compatible with the NRC's regulatory program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

3. 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 their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, 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 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.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program ~~(e.g., Sealed Source and Device or Section 11e.2 of the AEA byproduct authority relating to regulatory authority uranium milling activities in an Agreement State (SRM-SECY-95-0136)).~~

4. Performance Evaluation.

Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State programs are adequate and compatible prior to entrance into a Section 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective.

The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," IMPEP is a performance evaluation 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. The same criteria 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 provided by the OAS to make a determination of program adequacy and compatibility.

As a part of the performance evaluation process, the NRC will take necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and providing assistance to help address weaknesses or areas needing improvement within an Agreement State program. Monitoring, heightened oversight, probation, suspension, or termination of an agreement may be applied for certain program deficiencies or emergencies (e.g. loss of funding, natural or man-made events, pandemic). The NRC's actions in addressing program deficiencies or emergencies will be a well-defined predictable process that is consistently and fairly applied.

5. Program Funding.

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. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance ~~in terms of~~ public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also have the effect of ensuring compatible approaches to licensing and inspection for the NMP.

6. Regulatory Development.

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations, orders, 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. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware 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.

Two national organizations composed of State radiation protection programs facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a mechanism for Agreement States to work with each other and with the NRC on regulatory issues. The OAS provides a forum for centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

E. ADEQUACY AND COMPATIBILITY.

In accordance with Section 274 of the AEA, an Agreement State program must provide for an acceptable level of protection of public health and safety in an Agreement State. This is the "adequacy" component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the "compatibility" component.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the NRC provides Agreement States a broad range of flexibility in the administration of their individual programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs and preferences.

The NRC will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in these compatibility categories allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent and compatible in the regulation of agreement material across the country.

Program elements⁶ for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Some program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff will seek the advice of the Agreement States. The Commission will consider such advice in its final decision.

1. Adequacy.

An "adequate" program ~~should include~~ those program elements of a radiation control regulatory program necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of agreement material.

⁶ For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

The level of protection afforded by the program elements of the NRC's materials regulatory program is presumed to be adequate to provide a reasonable assurance of protection of public health and safety. Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in items i. through v. of this section, that the NRC and Agreement States will use to define the scope of the review of the program. The NRC and Agreement States will also consider, when appropriate, other program elements of an Agreement State that appear to affect the program's ability to provide reasonable assurance of public health and safety protection.

i. Legislation and Legal Authority:

State statutes shall: (a) authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC; (b) authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety; (c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and (d) be otherwise consistent with applicable Federal statutes. In addition, the State should have existing legally enforceable measures such as generally applicable rules, orders, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt legally binding requirements based on those identified by the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shall implement the essential objectives articulated in the NRC requirements.

ii. Licensing.

The Agreement State shall conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee's operations can be conducted safely ~~and securely~~. Licenses shall provide for reasonable assurance of public health and safety protection in relation to the licensed activities.

iii. Inspection and Enforcement.

The State shall periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

iv. Personnel.

The State shall be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

v. Incidents and Allegations.

The State shall respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

2. Compatibility.

A "compatible" program ~~should consist~~ of those program elements necessary to ~~support the NMP's goal to promote~~ allow for an orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (i.e., those NRC program elements not assigned to a Compatibility Category A, B, or C). However, such program elements of an Agreement State relating to agreement material shall (1) be compatible with those of the NRC (i.e., should not create

conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not ~~effectively~~ preclude, a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection; and (3) not effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State shall adopt program elements assigned Categories A, B, and C.

i. Category A - Basic Radiation Protection Standards.

This category includes basic radiation protection standards that encompass dose limits, concentration and release limits related to radiation protection in 10 CFR Part 20, that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR 61.41.⁷ Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with "adequate protection" that take into account permissible balancing considerations such as economic cost and other factors.

ii. Category B – Cross Jurisdictional Program Elements.

This category pertains to a small number of program elements that cross jurisdictional boundaries. ~~This category will be limited to a small number of program elements and that have an impact on public health and safety and~~ should be addressed to ensure uniformity of

⁷ The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States the flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification.

Agreement State program elements shall be essentially identical to those of the NRC. Because program elements used in the [NMP Agreement State Program](#) are necessary to maintain an acceptable level of protection of public health and safety, economic factors⁸ should not be considered.

iii. Category C - Other NRC Program Elements.

These are other NRC program elements that are important for an Agreement State to [implement in order to](#) avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements. Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

iv. Category D - Program Elements ~~not~~ [Not](#) Required for Compatibility.

These are program elements that do not meet any of the criteria listed in Category A, B, or C above and are not required to be adopted for purposes of compatibility.

v. Category NRC - Areas of Exclusive NRC Regulatory Authority.

These are program elements over which the NRC cannot discontinue its regulatory authority ~~to Agreement States~~ pursuant to the AEA or provisions of [Title 10 of the Code of Federal Regulations 10 CFR](#). However, an Agreement State may inform its licensees of these NRC requirements through an [appropriate](#) mechanism ~~that is appropriate~~ under the State's

⁸ For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

F. CONCLUSION.

The NMP is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement materials to identify specific changes that should be considered based on experience or to further improve overall safety, performance, compatibility, and effectiveness.

The NRC encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the NRC to foster and enhance an NMP that establishes a coherent and compatible nationwide program for the regulation of agreement material.

Dated at Rockville, Maryland, this _____ day of 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary for the Commission.

AFFIRMATON

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-15-0087: AGREEMENT STATE PROGRAM
POLICY STATEMENT AND PROGRAM
RECOMMENDATIONS

Approved XX In Part Disapproved XX In Part Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

02/ 8 /16

DATE

Entered on "STARS" Yes No _____

**Commissioner Svinicki's Comments on SECY-15-0087
Agreement State Program Policy Statement and Recommendations**

I approve in part and disapprove in part the staff's recommendations related to the Agreement State program, as outlined in the paper. I sincerely appreciate the extensive outreach and coordination with our Agreement State partners undertaken by the NRC staff. This hard work is reflected in the clear discussion of issues and high quality draft *Federal Register* notice before us. I approve the staff's recommendation to publish the proposed consolidated Agreement State policy statement for public comment in the *Federal Register*, subject to the attached edits. I act on the remainder of the staff's recommendations and proposed changes, as described below.

With respect to the options presented by the staff to address the approach for determining Agreement State program compatibility, I approve Option 1.A and disapprove Option 1.B. As noted by my colleagues, a detailed case has not been made that it is productive at the current time to abandon the existing, three-year implementation standard. Moreover, thoughtful and substantive cautions have been offered against doing so. Although I am potentially open to the merits of Commissioner Ostendorff's blended proposal to further risk-inform the current approach by assessing compatibility determinations based on safety and security significance, I look forward to receiving the NRC staff's assessment of the expected benefits and resources needed to undertake this development before I reach a conclusion.

I approve the staff's recommended Option 2.A, to improve the clarity and consistency of the Integrated Materials Performance Evaluation Program (IMPEP) evaluation criteria and to update the IMPEP team member training and qualification requirements. As noted by the staff, the current IMPEP findings are well understood and feedback received about the process is that it is not in need of substantial change or fundamental revision.

Finally, with respect to my proposed edits to the draft *Federal Register* notice, I agree with Commissioner Baran's observation, as stated in his vote, that "the [National Materials Program] is more of a vision of a cooperative and synergistic relationship between NRC and the Agreement States rather than a concrete set of specific statutory or regulatory requirements." I have attempted to put forward edits to reflect this. In addition, I do not agree that the staff's sweeping exclusionary statement regarding the consideration of cost/regulatory burden with respect to compatibility category B is accurate, nor is it consistent with the Principles of Good Regulation, which are cited elsewhere in the proposed policy statement. Rather than engage in further elaboration of this complex topic, my edits would strike the sentence and accompanying footnote. Also, as I stated in my vote on SECY-12-0112, I do not approve expunging the term "relinquish" and inserting the word "discontinue" in all instances. These two terms have been used historically by the NRC to differentiate two different circumstances. My edits attempt to honor this historic practice.



Kristine L. Svinicki 8 February 2016

NUCLEAR REGULATORY COMMISSION

[NRC-2015-xxxx]

Policy Statement for the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on NRC's Agreement State Programs: ~~the~~ "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program." ~~have been consolidated in a single policy statement.~~ The resulting proposed single policy statement has been revised to add that public health and safety includes physical protection of agreement material.¹

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

¹ Agreement material means byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass, as defined in Sections 274b. of the Atomic Energy Act of 1954, as amended.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **<INSERT: NRC-20YY-XXXX>**. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN 12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Dimmick, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: (301) 415-0694, e-mail: Lisa.Dimmick@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

- I. Obtaining Information and Submitting Comments.
- II. Background.
- III. Discussion of Proposed Changes.
- IV. Policy Statement for the Agreement State Program.

I. Obtaining Information and Submitting Comments.

A. Obtaining Information.

Please refer to Docket ID **<INSERT: NRC-20YY-XXXX>** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **<INSERT: NRC-20YY-XXXX>**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, (301) 415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments.

Please include Docket ID **<INSERT: NRC-20YY-XXXX>** in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment

submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background.

The “Adequacy and Compatibility of Agreement State Programs” (62 FR 46517; [September 3, 1997](#)) presents the NRC’s policy for determining the adequacy and compatibility of Agreement State programs. The “Statement of Principles and Policy for the Agreement State Program” (62 FR 46517; [September 3, 1997](#)) describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.² The application of these two policy statements has significant influence on the safety and security of agreement materials and on regulation of the more than 22,000 Agreement State and NRC materials licensees.

In the 1990s, the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program” were developed by working groups consisting of Agreement States representatives and the NRC staff. A number of workshops and meetings were also held to gather stakeholder input. The

² Section 274 of the Atomic Energy Act (Act), as amended, provides a statutory basis under which the NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC’s authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with section 274b. of the Act.

Commission approved both policy statements in the Staff Requirements Memorandum (SRM) to SECY-95-112, "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," and SECY-95-115, "Final Statement of Principles and Policy for Agreement State Program," and "Procedures for Suspension and Termination of an Agreement State Program," dated June 29, 1995 (ADAMS Accession No. ML003759325), but deferred implementation until all implementing procedures were completed and approved by the Commission. In the June 30, 1997, ~~the~~ SRM to SECY-97-054, "Final Recommendations on Policy Statements and ~~i~~Implementing Procedures ~~F~~for: 'Statement of Principles and Policy for the Agreement State Program' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs,'" the Commission approved the accompanying implementing procedures for the policy statements (ADAMS Accession No. ML051610710). The policy statements became effective on September 3, 1997 (62 FR 46517).

The NRC staff's efforts to update the Agreement State policy statements began with the Commission's direction provided in the SRM to SECY-10-0105," Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licesnied Device (RIN 3150-A133) issued on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and associated guidance documents to include both safety and source security considerations in the determination process. Because Agreement State adequacy and compatibility are key components of the Integrated Materials Performance Evaluation Program (IMPEP),³ the Commission's ~~policy statement on the~~ "Statement of Principles and Policy for the Agreement State Program" was revised concurrently. As directed, ~~T~~he NRC staff's revisions to the policy statements added that public health and safety includes physical protection of agreement material.

³ The NRC developed the IMPEP to evaluate the adequacy and compatibility of Agreement State programs and the adequacy of the NRC's nuclear materials program activities.

The Commission approved publication of the proposed updates to the two policy statements in the revised SRM to SECY-12-0112, "Policy Statements on Agreement State Programs," dated May 28, 2013 (ADAMS Accession No. ML13148A352). The NRC staff published the two proposed policy statements on June 3, 2013 (78 FR 33122), for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118; August 16, 2013). The NRC held two public meetings (July 18 and August 6, 2013), and a topical session during the OAS annual meeting in Reno, Nevada on August 28, 2013. The NRC staff specifically solicited comment on Compatibility Category B, and whether or not the policy statements should maintain the 1997 language in the policy statement describing the adoption and number of compatible regulations from in the "Policy Statement on Adequacy and Compatibility of Agreement State Programs."

The NRC staff received 51 comments on the policy statements, in general, and 45 comments on Compatibility Category B from 13 commenters, including Agreement States, industry organizations, and individuals. Consistency and flexibility were underlying themes expressed in the comments. The need for consistent application of the NRC's policies and flexible implementation of these policies were was mentioned in written comments, and were was also expressed orally during the public meetings and OAS topical session. The NRC changed the policy statements as a result of the written comments and input from attendees to the two public meetings and the OAS topical session.

In COMSECY-14-0028, "Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward," dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY-14-0028, dated August 12, 2014 (ADAMS Accession No. umber ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy

statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the “Principles of Good Regulation” (ADAMS Accession No. ~~umber~~ ML15083A026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, “Policy Statement on Agreement State Programs,” of this document.

III. Discussion of Proposed Changes.

The NRC’s proposed consolidated policy statement addresses the Commission direction in the SRMs to SECY-10-0105, SECY-12-0112, and SECY-14-0028 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff’s disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission’s proposed consolidated policy removes details on IMPEP and the “Principles of Good Regulation.” ~~(ADAMS Accession No. ML15083A026).~~ The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP) ~~that defines the mission and roles and responsibilities of the NMP.~~

In response to the *Federal Register* notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy statement. In the FRN, the NRC specifically solicited comment on the following topics concerning Compatibility Category B:

1. *To clarify the meaning of a “significant transboundary implication,”⁴ the NRC is proposing to define a significant transboundary implication as “one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be*

⁴ The NRC staff solicited public comment on the phrase “significant transboundary ~~eburnsay~~ implication” in the *Federal Register* on June 3, 2013 (78FR 33122)

addressed to ensure uniformity of regulation on a nationwide basis.” However, the NRC recognizes that the use of the word “particular” can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of “significant transboundary implication” and whether the word “particular” should be replaced with the phrase “significant and direct.”

Based on comments received, the NRC staff noted that there is a wide variation on the interpretation of the description of Compatibility Category B and of the definition of significant transboundary implication. In light of this, the Commission is proposing a new description of Compatibility Category B to eliminate the phrase “significant transboundary implication.” The new language, *i.e.*, “cross jurisdictional boundaries,” embodies the original description of Compatibility Category B and eliminates the confusion surrounding the language incorporated into the 1997 version of the policy statement.

2. *Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the Policy Statement. The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders, Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.*
The majority of commenters requested that examples of program elements considered Compatibility Category B continue to be included in the description. No changes were made to the policy statement. The Commission retained examples in Section E.2.ii.
3. *The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundary implications, should be considered in the definition of significant transboundary implication.*

Specific comments were received regarding the consideration of the movement of goods and services. The majority of the commenters felt that it was not necessary to include the consideration of the movement of goods and services in the description of Compatibility Category B. The Commission determined that this position was supported in the “Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device.” In this rule, the Commission concluded that Agreement States should be allowed the flexibility to further enhance accountability programs, ultimately resulting in a change in compatibility for the rule from Compatibility Category B to Compatibility Category C. The Commission also concluded that “Reciprocity (i.e., reciprocal recognition of a radioactive materials license issued by another regulatory jurisdiction) has worked well for decades and has allowed the transfer, distribution, and servicing of radioactive material devices with no significant transboundary issues.” The Commission concluded that the movement of goods and services should not be considered in assessing compatibility and made no change to the proposed policy statement.

4. *The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.*

The comments included two comments ~~from industry representatives~~ that ~~differed on whether or not~~stated that economic factors should be considered and noted that economic factors have been considered by the Commission in determining compatibility categories in the past. No comments were received stating that economic factors should not be considered. Additionally, the Commission considered Executive Order (EO) 13563, which states that, “... each agency must, among other things ... propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs [and] tailor its regulations to impose the least burden on society, consistent with

~~obtaining regulatory objectives.” In reviewing the~~Based on the comments received and ~~in reviewing previous rationale on this topic as discussed in SECY-95-112 “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,”~~the guidance in EO 13563, the Commission determined that economic factors (i.e., those costs incurred by the regulated community to comply with regulatory requirement(s)) ~~should not~~can be considered. The Commission will consider the cost to the regulator and the cost to industry versus the potential benefit to safety and security received in making compatibility determinations. ~~No change to the proposed policy statement has been made.~~

The NRC also solicited specific comment on the use of alternative wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. The 1997 version of the policy statement had specific text in three places regarding the expectation for adopting requirements in an identical manner to maintain compatibility. Six commenters supported returning the wording back to the text that was originally published in 1997. Based on comments received, the Commission retained the original language from the 1997 version in the proposed policy statement.

Two commenters questioned the description of Compatibility Category D and indicated the description in the policy statement as published in the Federal Register on June 3, 2013, (78 FR 33122) appears to discuss compatibility in general and does not describe Category D as it is defined in Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (~~See <http://pbdupws.nrc.gov/docs/ADAMS> Accession No. [ML0417/ML041770094.pdf](http://pbdupws.nrc.gov/docs/ADAMS)~~). The Commission agreed and moved the language listed under Compatibility Category D, in the proposed policy statement, to the introductory paragraph of Section E.2., “Compatibility,” and revised the description of Compatibility Category D in Section E.2.iv.

The criteria for adequacy and compatibility as proposed in this policy statement will provide Agreement States with flexibility in the administration of their individual programs. Recognizing that Agreement States have responsibilities for radiation sources other than agreement materials, this proposed policy statement would allow Agreement States to fashion their programs so as to reflect specific State needs and preferences while accomplishing a compatible national program consistent with Section 274 of the Atomic Energy Act of 1954, as amended.

The requirements in Compatibility Categories A, B, and C will allow the NRC to ensure that an orderly pattern for the regulation of agreement materials exists nationwide. The NRC believes that this approach achieves a proper balance between the Agreement States' need for flexibility and the need for coherent and compatible regulation of agreement material across the country.

IV. Proposed Policy Statement for the Agreement State Program.

A. PURPOSE.

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).⁵ Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of "agreement material" limited to byproduct, source, and quantities of special nuclear material insufficient to form a critical mass. This policy statement supersedes the "Policy

⁵ Section 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC relinquishes and the State assumes regulatory authority over some or all of these materials. The material over which the State receives regulatory authority under such agreement is termed "agreement material."

Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program.”

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Section 274b. that provide for discontinuance 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 quantities of special nuclear agreement~~ material ~~insufficient to form a critical mass~~; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and maintain programs that are compatible with the ~~National Materials Program (NMP) Commission’s program for regulation of such materials.~~

This policy statement also presents the NRC’s policy for determining the adequacy and compatibility of Agreement State programs as part of the NMP. This policy statement and clarifies the meaning and use of the terms “adequate to protect public health and safety” and “compatible with the NRC’s regulatory program” as applied to Agreement State programs.

Although not defined in the AEA, the National Materials Program (NMP) is a term that the Commission and Agreement States use to describe the broad collective effort, consistent with the AEA, within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement materials. Also consistent with the AEA, the NMP vision/mission of the NMP is to provide a consistent, coherent national system for the regulation of agreement materials with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP concept, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are defined based on their legislative authority, program needs, and expertise ~~as they carry out their respective programs.~~ The NMP also ~~benefits from serves as a mechanism for participation and involvement the contributions by of~~ two national organizations, which are

composed of State radiation protection programs: the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD).

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the Agreement State Program consistent with the AEA and the NMP concept. The~~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, nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

B. BACKGROUND.

~~This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the NMP. The 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, nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.~~

This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs as part of the NMP. This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs. The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274 of the AEA. Subsection 274d. states that the NRC

shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement materials as an integral part of their health and safety mission as it relates to controlling and 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 physical protection of agreement material.

C. STATEMENT OF LEGISLATIVE INTENT.

In 1954, 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 clearly defining the boundaries of Federal and State authorities related to nuclear material. 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 AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could relinquish regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of certain facilities and activities including, nuclear reactors, quantities of special nuclear material sufficient to form a critical mass, the export and import of nuclear materials, and matters related to common defense and security.

The legislation did not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover. ~~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 NRC to provide training, with or without charge, and other services to State officials and employees as the Commission deems appropriate. However, in rendering this assistance, Congress did not intend that the NRC 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 under their Agreement and to permit the NRC to ~~discontinue~~ relinquish its regulatory responsibilities in those areas.

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

D. PROGRAM IMPLEMENTATION.

1. Implementation of the Agreement State Program NMP is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement materials; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State preferences.

i. Principles of Good Regulation.

In 1991, the Commission adopted the “Principles of Good Regulation” to serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC’s regulatory activities have been of the highest quality, and are appropriate and consistent. The “Principles of Good Regulation” recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC’s implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles may be useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP ~~and individual NRC and Agreement State materials programs.~~

ii. Performance Assessment.

To provide NRC oversight and ensure that Agreement State programs ~~under the NMP~~ continue to provide adequate protection of public health and safety and are compatible with the NRC's regulatory program, periodic program assessment is needed ~~to ensure that programs under the NMP continue to be adequate and compatible~~. The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation 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.

iii. 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, including physical protection of 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.

iv. Compatible in Areas of National Interest.

The NRC and the Agreement States have the responsibility to ensure that the radiation control programs are compatible. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. ~~They~~ program should be effective and cooperatively implemented by the NRC and the Agreement States and also should provide uniformity and achieve common strategic outcomes in program areas having national significance.

Such areas of national significance include aspects of licensing, inspection and enforcement, response to incidents and allegations, security of ~~aggregated~~ radioactive material

listed in Appendix A of part 37 to Title 10 of the *Code of Federal Regulations* (10 CFR), and safety reviews for the manufacture and distribution of sealed sources and devices.

Furthermore, communication using a nationally accepted set of terms with common understanding, helps to ensureing an adequate level of protection of public health and safety that is consistent and stable across the nation, ~~and~~ Evaluation of the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety ~~are~~is essential to maintaining a strong NMP.

v. Flexibility.

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

2. New Agreements.

Section 274 of the AEA requires that once a decision to 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 that would be 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, staffing plan, a

narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the 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 NRC determines that the proposed State program is adequate for protection of public health and safety and compatible with the NRC's regulatory program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

3. 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 their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and offer other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, 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 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.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program ~~(e.g., Sealed Source and Device or Section 11e.2 of the AEA byproduct authority relating to regulatory authority uranium milling activities in an Agreement State (SRM-SECY-95-0136))~~.

4. Performance Evaluation.

Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State programs are adequate and compatible prior to entrance into a Section 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective.

The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," IMPEP is a performance evaluation 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. The same criteria 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 provided by the OAS to make a determination of program adequacy and compatibility.

As a part of the performance evaluation process, the NRC will take necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and providing assistance to help address weaknesses or areas needing improvement within an Agreement State program. Monitoring, heightened oversight, probation, suspension, or termination of an agreement may be applied for certain program deficiencies or emergencies (e.g. loss of funding, natural or man-made events, pandemic). The NRC's actions in addressing program deficiencies or emergencies will be a well-defined predictable process that is consistently and fairly applied.

5. Program Funding.

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. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance ~~in terms of~~ to public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also ~~have the effect of~~ help to ensure ~~ing~~ compatible approaches to licensing and inspection ~~for~~ and thereby strengthen the NMP.

6. Regulatory Development.

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations, orders, 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. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware 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.

Two national organizations composed of State radiation protection programs personnel facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a mechanism forum for Agreement States to work with each other and with the NRC on regulatory issues, including. ~~The OAS provides a forum for~~ centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

E. ADEQUACY AND COMPATIBILITY.

In accordance with Section 274 of the AEA, an Agreement State program must provide for an acceptable level of protection of public health and safety in an Agreement State. This is the “adequacy” component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the “compatibility” component.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the NRC provides Agreement States a broad range of flexibility in the administration of their individual programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs and preferences.

The NRC will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in these compatibility categories allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent and compatible in the regulation of agreement material across the country.

Program elements⁶ for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Some program elements for compatibility may also ~~impact~~ affect public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff will seek input from ~~the advice of the~~ Agreement States. The Commission will consider such ~~advice~~ input in its final decision.

1. Adequacy.

An "adequate" program ~~should~~ includes those program elements of a radiation control regulatory program necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of agreement material.

⁶ For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

The level of protection afforded by the program elements of the NRC's materials regulatory program is presumed to be adequate to provide a reasonable assurance of protection of public health and safety. Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in items i. through v. of this section, that the NRC and Agreement States will use to define the scope of the review of the program. The NRC and Agreement States will also consider, when appropriate, other program elements of an Agreement State that appear to affect the program's ability to provide reasonable assurance of the protection of public health and safety ~~protection~~.

i. Legislation and Legal Authority:

Agreement State statutes shall: (a) authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC; (b) authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety; (c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and (d) be otherwise consistent with applicable Federal statutes. In addition, the State should have existing legally enforceable measures such as generally applicable rules, orders, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt legally binding requirements based on those identified by the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shall implement the essential objectives articulated in the NRC requirements.

ii. Licensing.

The Agreement State shall conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee's need and proposed uses of the agreement material are in accordance with the AEA and that operations can be conducted safely and securely. Licenses shall provide for reasonable assurance of public health and safety and security of agreement materials protection in ~~relation to~~ the conduct of licensed activities.

iii. Inspection and Enforcement.

The Agreement State shall periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

iv. Personnel.

The Agreement State shall be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

v. Incidents and Allegations.

The Agreement State shall respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

2. Compatibility.

A "compatible" program ~~should~~ consists of those program elements necessary to ~~support the NMP's goal to promote~~ sustain an orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility Category A, B, or C). However, such program elements of an Agreement State relating to

agreement material shall (1) be compatible with those of the NRC (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not effectively preclude, a practice authorized by the AEA and in the national interest without an adequate public health and safety or environmental basis related to radiation protection; and (3) not effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State shall adopt program elements assigned Categories A, B, and C.

i. Category A - Basic Radiation Protection Standards.

This category includes basic radiation protection standards that encompass dose limits, concentration, and release limits related to radiation protection in 10 CFR Part 20, that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR 61.41.⁷ Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with “adequate protection” that take into account permissible balancing considerations such as economic cost and other factors.

ii. Category B – Cross Jurisdictional Program Elements.

This category pertains to a small number of program elements that cross jurisdictional boundaries. This category will be limited to a small number of only those program elements that

⁷ The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

have an impact on public health and safety and should be addressed to ensure uniformity of regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification.

Agreement State program elements shall be essentially identical to those of the NRC. ~~Because program elements used in the NMP are necessary to maintain an acceptable level of protection of public health and safety, economic factors⁸ should not be considered.~~

iii. Category C - Other NRC Program Elements.

These are other NRC program elements that are important for an Agreement State to implement in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements. Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice authorized by the AEA and in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

iv. Category D - Program Elements ~~n~~Not Required for Compatibility.

These are program elements that do not meet any of the criteria listed in Category A, B, or C above and are not required to be adopted for purposes of compatibility.

v. Category NRC - Areas of Exclusive NRC Regulatory Authority.

These are program elements over which the NRC cannot ~~discontinue-relinquish~~ its regulatory authority to Agreement States pursuant to the AEA or provisions of 10 CFR. However, an Agreement State may inform its licensees of these NRC requirements through a mechanism that is appropriate under the State's administrative procedure laws as long as the

⁸ ~~For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.~~

State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

F. CONCLUSION.

The ~~NMP is dynamic and the~~ NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement materials to identify specific changes that should be considered based on experience or to further improve overall safety, performance, compatibility, and effectiveness.

The NRC encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the NRC to foster and enhance an NMP that establishes a coherent and compatible nationwide program for the regulation of agreement material.

Dated at Rockville, Maryland, this _____ day of 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary for the Commission.

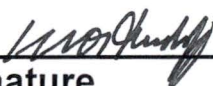
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Ostendorff
SUBJECT: SECY-15-0087: AGREEMENT STATE PROGRAM
POLICY STATEMENT AND RECOMMENDATION

Approved In part Disapproved In part Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached None _____



Signature

7/24/15

Date

Entered in STARS

Yes _____

No _____

Commissioner Ostendorff's Comments on SECY-15-0087: Agreement State Program Policy Statement and Recommendation

I want to thank the staff and the Agreement States for the thorough review and assessment of the implementation of the National Materials Program. Your hard work on these revisions and your day-to-day commitment to protect public health and safety do not go unnoticed. SECY-15-0087 asks the Commission to consider three recommendations. First, approve for publication in the *Federal Register* the proposed policy statement for comment. Second, approve the staff's recommended option to implement a more comprehensive approach to determining Agreement State Compatibility. Third, approve the staff's recommended option to improve the Integrated Materials Performance Evaluation Program (IMPEP) consistency through updates to the IMPEP guidance and training.

First, I approve the staff's recommendation to issue the Agreement State Policy Statement for public comment in the *Federal Register*, as modified in the attached document.

Second, I approve a modified version of option 1.A. The staff recommended two options for development of a more comprehensive approach to assessing Agreement State compatibility, which as stated in this SECY paper addresses the need to look not only at timeliness of adopting a regulation required for compatibility, but more broadly at the compatibility of the program. Here I must ask—what problem are we trying to solve and what is the best approach to address the problem? In this case, the underlying issue, as previously identified by the Commission, is the need for a performance-based approach for assessing compatibility of Agreement State radiation control programs. The staff identified two options based on Agreement State and stakeholder input. I will discuss each of these compatibility-related options in turn.

Option 1.A: Continue the Current Approach

Here the staff found that the current approach is well regarded and familiar. I am proud of the NRC's Agreement State Program and therefore I agree. Maintaining the current approach provides for reliability and efficiency in accordance with the Principles of Good Regulation. However, the staff found that the current approach is less risk informed in making a compatibility determination because it does not differentiate between the safety and security significance of each regulation and legally binding requirement. My view is that the proposed policy and the IMPEP process provide the framework to resolve how to assess compatibility. Currently, there is flexibility in how an Agreement State can address compatibility through means other than legislation (e.g., regulations, orders, or license conditions). To further risk-inform the current approach, the staff should base compatibility determinations on the safety and security significance of each rule and legally binding requirement.

Additionally, the staff found that the Agreement States would continue to face challenges in adopting NRC regulations in three years and that the three-year criteria is not reflective of the safety and security significance of a rule. To ensure protection of public health and safety, it is in the nation's best interest for the IMPEP to assess all the ways that an Agreement State can be compatible within the three-year time limit. I do not believe a new process is needed to address timeliness. Rather, the staff should add to the assessment of compatibility: "When making a determination of a compatibility finding, the Management Review Board should take into account the safety and security significance of a particular NRC regulation or legally binding

requirement and the number and type of licensees impacted in cases where the Agreement State did not meet the three-year adoption criteria.”

Option 1.B: Implement a Comprehensive Approach to Determining Agreement State Compatibility.

Here the staff found that modifying the use of the Standing Committee on Compatibility to develop a tiered-time approach required for Agreement States to adopt an NRC proposed rule, along with updating and improving Management Directive 5.6, was the staff’s preferred option to address the compatibility determination for an Agreement State. As stated above, I see a benefit from maintaining the three-year criteria. By further risk-informing the current approach to include assessing compatibility determinations based on safety and security significance, along with the number of licensees the regulation, rule, or legally binding requirement covers, the objective of developing a performance-based approach for assessing compatibility of Agreement State radiation control programs is met.

Therefore, I disapprove the staff’s recommendation of option 1.B. and approve option 1.A. as modified above. Further, the staff should evaluate the need to update the MD 5.6 to implement the modification to option 1.A.

Third, while the Commission directed the staff to consider a holistic measurement for adequacy and compatibility in assessing NRC and Agreement States programs, I agree that the IMPEP process is working, and updates to guidance and training will facilitate consistency in implementing the IMPEP. Therefore, I approve the staff’s recommendation 2.A, to revise the IMPEP by focusing on consistency, flexibility, and training.

NUCLEAR REGULATORY COMMISSION

[7590-01-P]

[NRC-2015-xxxx]

Policy Statement for the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on NRC's Agreement State Programs. The "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program" have been consolidated in a single policy statement. The resulting proposed policy statement has been revised to add that public health and safety includes physical protection of agreement material.¹

Commented [BT1]: Agreement Material should be used consistently throughout

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

¹ The term 'agreement material' means material listed in Sections 274b. of the Atomic Energy Act of 1954, as amended, over which the States may receive regulatory authority.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID <INSERT: NRC-20YY-XXXX>. Address questions about NRC dockets to Carol Gallagher; telephone: (301) 415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN 12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Dimmick, Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: (301) 415-0694, e-mail: Lisa.Dimmick@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

- I. Obtaining Information and Submitting Comments.
- II. Background.
- III. Discussion of Proposed Changes.
- IV. Policy Statement for the Agreement State Program.

B. Submitting Comments.

Please include Docket ID <INSERT: NRC-20YY-XXXX> in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background.

The "Adequacy and Compatibility of Agreement State Programs" (62 FR 46517) presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The "Statement of Principles and Policy for the Agreement State Program" (62 FR 46517) describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.² The application of

Commented [BT2]: I approve editing the footnote to change relinquishes to discontinues.

² Section 274 of the Atomic Energy Act (Act), as amended, provides a statutory basis under which the NRC ~~relinquishes discontinues to the States~~ portions of its regulatory authority to the States to license and regulate byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with section 274b. of the Act.

these two policy statements has significant influence on the safety and security of agreement materials and on regulation of the more than 22,000 Agreement State and NRC materials licensees.

In the 1990s, the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program" were developed by working groups consisting of Agreement States representatives and the NRC staff. A number of workshops and meetings were also held to gather stakeholder input. The Commission approved both policy statements in the Staff Requirements Memorandum (SRM) to SECY-95-112, "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," and SECY-95-115, "Final Statement of Principles and Policy for Agreement State Program," and "Procedures for Suspension and Termination of an Agreement State Program," dated June 29, 1995 (ADAMS Accession No. ML003759325), but deferred implementation until all implementing procedures were completed and approved by the Commission. In the June 30, 1997, the SRM to SECY-97-054, "Final Recommendations on Policy Statement and implementing Procedures For: 'Statement of Principles and Policy for the Agreement State Program' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs,'" the Commission approved the accompanying implementing procedures for the policy statements (ADAMS Accession No. ML051610710). The policy statements became effective on September 3, 1997 (62 FR 46517).

The NRC staff's efforts to update the Agreement State policy statements began with the Commission's direction on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and associated guidance documents to include both safety and source security considerations in the determination process. Because Agreement State adequacy and compatibility are key components of the Integrated Materials

policy statements as a result of the written comments and input from attendees to the two public meetings and the OAS topical session.

In COMSECY-14-0028, "Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward," dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY-14-0028, dated August 12, 2014 (ADAMS Accession Number ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the Principles of Good Regulation (ADAMS Accession Number ML15083A026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, "Policy Statement on Agreement State Programs," of this document.

III. Discussion of Proposed Changes.

The NRC's proposed consolidated policy statement addresses the Commission direction in the SRM to SECY-10-0105 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff's disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission's proposed consolidated policy removes details on IMPEP and the "Principles of Good Regulation" (ADAMS Accession No. ML15083A026). The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP) that defines the mission and roles and responsibilities of the NMP.

In response to the *Federal Register* notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy statement. In the FRN, the NRC specifically solicited comment on the following topics concerning Compatibility Category B:

1. To clarify the meaning of a "significant transboundary implication,"⁴ the NRC is proposing to define a significant transboundary implication as "one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis." However, the NRC recognizes that the use of the word "particular" can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of "significant transboundary implication" and whether the word "particular" should be replaced with the phrase "significant and direct."

Commented [BT3]: I approve Editing spelling error in footnote

Based on comments received, the NRC staff noted that there is a wide variation on the interpretation of the description of Compatibility Category B and of the definition of significant transboundary implication. In light of this, the Commission is proposing a new description of Compatibility Category B to eliminate the phrase "significant transboundary implication." The new language, e.g., "cross jurisdictional boundaries," embodies the original description of Compatibility Category B and eliminates the confusion surrounding the language incorporated into the 1997 version of the policy statement.

2. Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the Policy Statement. The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders,

⁴ The NRC staff solicited public comment on the phrase "significant ~~transoburnsay~~ transboundary implication" in the *Federal Register* on June 3, 2013 (78FR 33122)

statement, to the introductory paragraph of Section E.2., "Compatibility," and revised the description of Compatibility Category D in Section E.2.iv.

The criteria for adequacy and compatibility as proposed in this policy statement will provide Agreement States with flexibility in the administration of their individual programs. Recognizing that Agreement States have responsibilities for radiation sources other than agreement materials, this proposed policy statement would allow Agreement States to fashion their programs so as to reflect specific State needs and preferences while accomplishing a compatible national program consistent with Section 274 of the Atomic Energy Act of 1954, as amended.

The requirements in compatibility categories A, B, and C will allow the NRC to ensure that an orderly pattern for the regulation of agreement materials exists nationwide. The NRC believes that this approach achieves a proper balance between the Agreement States' need for flexibility and the need for coherent and compatible regulation of agreement material across the country.

IV. Proposed Policy Statement for the Agreement State Program.

A. PURPOSE.

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the NRC-Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).⁵ Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs

Commented [BT4]: This footnote should be the same as footnote 2 above.

⁵ Section 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC relinquishes discontinues and the State assumes portions of its regulatory authority over some or all of these materials to the States. The material over which the State receives regulatory authority under such agreement is termed "agreement material."

for the protection of public health and safety in the industrial, medical, commercial, and research uses of ~~agreement material, byproduct, source, and quantities of special nuclear material~~ insufficient to form a critical mass. This policy statement supersedes the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program."

Commented [BT5]: I approve as edited. The staff should use "agreement material" here since it is defined in footnote 1 as these specific elements.

~~This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs as part of the National Materials Program (NMP). This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs.~~

Commented [BT6]: I approve moving these sentences here from below.

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Section 274b. that provide for discontinuance 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 quantities of special nuclear material insufficient to form a critical mass; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and are compatible with the ~~National Materials Program (NMP)~~.

Although not defined in the AEA, the NMP is a term to describe the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement materials. The mission of the NMP is to provide a coherent national system for the regulation of agreement materials with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are based on their legislative authority, program needs and expertise

as they carry out their respective programs. ~~The NMP also serves as a mechanism for participation and involvement by~~ two national organizations which are composed of State radiation protection programs: the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD) ~~are significant resources used by the NMP.~~

Commented [BT7]: Approve as edited

B. BACKGROUND.

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the NMP. The 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, nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

~~This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs as part of the NMP. This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs.~~ The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274. Subsection 274d. states that the NRC shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs

for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement materials as an integral part of their health and safety mission as it relates to controlling and 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 physical protection of agreement material.

C. STATEMENT OF LEGISLATIVE INTENT.

In 1954, 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 clearly defining the boundaries of Federal and State. 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 AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could ~~relinquish~~ discontinue regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of certain facilities and activities including, nuclear reactors, quantities of

Commented [BT8]: I approve as edited.

special nuclear material sufficient to form a critical mass, 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 NRC to provide training, with or without charge, and other services to State officials and employees as the Commission deems appropriate. However, in rendering this assistance, Congress did not intend that the NRC 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 under their Agreement and to permit the NRC to discontinue its regulatory responsibilities in those areas.

Commented [BT9]: I approve as edited. These are the actual words of the AEA.

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

D. PROGRAM IMPLEMENTATION.

1. Implementation of the NMP is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement materials; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State ~~preferences, needs.~~

Commented [BT10]: I approve as edited.

i. Principles of Good Regulation.

In 1991, the Commission adopted the "Principles of Good Regulation" to serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, and are appropriate and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles may be useful as a part of a common culture of the ~~NMP that the~~ NRC and the Agreement States ~~to~~ share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP ~~and individual NRC and Agreement State materials programs.~~

Commented [BT11]: I approve as edited.

ii. Performance Assessment.

To ensure that programs under the NMP continue to provide adequate protection of public health and safety and are compatible with the NRC's regulatory program, periodic program assessment is needed to ensure that programs under the NMP continue to be

adequate and compatible. The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation 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.

iii. 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, including physical protection of 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.

iv. Compatible in Areas of National Interest.

The NRC and the Agreement States have the responsibility to ensure that the radiation control programs are compatible. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should be effective and cooperatively implemented by the NRC and the Agreement States and also should provide uniformity and achieve common strategic outcomes in program areas having national significance.

Such areas of national significance include aspects of licensing, inspection and enforcement, response to incidents and allegations, ~~security of aggregated radioactive material listed in Appendix A of part 37 to Title 10 of the Code of Federal Regulations (10 CFR)~~, and safety reviews for the manufacture and distribution of sealed sources and devices. Furthermore, communication using a nationally accepted set of terms with common

Commented [BT12]: I approve deletion of this reference

understanding, ensuring an adequate level of protection of public health and safety that is consistent and stable across the nation, and evaluation of the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety are essential.

v. Flexibility.

With the exception of those compatibility areas where programs should be essentially identical, Agreement State radiation control programs have flexibility in program implementation and administration to accommodate individual State preferences, State legislative direction, and local needs and conditions. A State has the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequate protection of public health and safety are met and compatibility is maintained.

However, the exercise of such flexibility should not ~~effectively~~ preclude a practice authorized by the AEA, and in the national interest ~~without an adequate public health and safety or environmental basis related to radiation protection.~~

Commented [BT13]: I approve as edited.

Commented [BT14]: I approve as edited.

2. New Agreements.

Section 274 of the AEA requires that once a decision to 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, staffing plan, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the 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 NRC determines that the proposed State program is adequate for protection of public health and safety and compatible with the NRC's regulatory program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

3. 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 their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, ~~to the extent permitted by resources, the NRC may provide will make training available opportunities_ and offer~~ other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

Commented [BT15]: I approve as edited

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, 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 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.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program (e.g., Sealed Source and Device or Section 11e.2 of the AEA byproduct authority relating to regulatory authority uranium milling activities in an Agreement State (SRM-SECY-95-0136)).

4. Performance Evaluation.

Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State programs are adequate and compatible prior to entrance into a Section 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective.

The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," IMPEP is a performance evaluation 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. The same criteria 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 provided by the OAS to make a determination of program adequacy and compatibility.

Commented [BT16]: I approve as edited.

As a part of the performance evaluation process, the NRC will take necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and providing assistance to help address weaknesses or areas needing improvement within an Agreement State program. Monitoring, heightened oversight, probation, suspension, or termination of an agreement may be applied for certain program deficiencies or emergencies (e.g. loss of funding, natural or man-made events, pandemic). As appropriate, the NRC also requests support from neighboring Agreement States to support an Agreement State with identified weaknesses or areas needing improvement. The NRC's actions in addressing program deficiencies or emergencies will be a well-defined predictable process that is consistently and fairly applied.

Commented [BT17]: I approve this addition.

5. Program Funding.

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. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also have the effect of ensuring compatible approaches to licensing and inspection for the NMP.

6. Regulatory Development.

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory

requirements (e.g., regulations, orders, 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. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware 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.

Two national organizations composed of State radiation protection programs facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a mechanism for Agreement States to work with each other and with the NRC on regulatory issues. The OAS provides a forum for centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

E. ADEQUACY AND COMPATIBILITY.

In accordance with Section 274 of the AEA, an Agreement State program must provide for an acceptable level of protection of public health and safety in an Agreement State. This is the "adequacy" component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the "compatibility" component.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the NRC provides ~~Agreement States~~ a broad range of flexibility in the administration of ~~their~~ individual ~~Agreement State~~ programs. Recognizing the fact that Agreement States have

Commented [BT18]: I approve as edited

responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs ~~and preferences.~~

The NRC will ~~only propose those~~ ~~minimize the number of~~ NRC regulatory requirements ~~that the Agreement States will be requested to adopt in an identical manner to maintain compatibility necessary.~~ ~~At the same time, requirements in these compatibility categories allow the NRC~~ to ensure that an orderly pattern for the regulation of agreement material exists nationwide, which the Agreement States will be required to adopt in an identical manner to maintain compatibility. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent ~~and~~ compatible in the regulation of agreement material across the country.

Commented [BT19]: I approve as edited.

Program elements⁶ for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Some program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff will coordinate with the ~~seek the advice of the~~ Agreement States. The Commission will consider ~~such advice~~ relevant information in its final decision.

Commented [BT20]: I approve as edited

1. Adequacy.

An "adequate" program ~~should includes~~ those program elements of a radiation control regulatory program necessary to maintain an acceptable level of protection of public health and

Commented [BT21]: I approve as edited

⁶ For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

significance. In adopting such requirements, Agreement States shall implement the essential objectives articulated in the NRC requirements.

ii. Licensing.

The State shall conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee's operations can be conducted ~~safely and securely~~. Licenses shall provide for reasonable assurance of public health and safety protection in ~~relation to the~~ conduct of the licensed activities.

Commented [BT22]: Not consistent with physical protection statement

Commented [BT23]: I approve as edited

iii. Inspection and Enforcement.

The State shall periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

iv. Personnel.

The State shall be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

v. Incidents and Allegations.

The State shall respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

2. Compatibility.

A "compatible" program should consist of those program elements necessary to ~~support the NMP's goal to promote~~ sustain an orderly pattern of regulation of radiation protection consistent with the NMP's objectives. In addition to those necessary to maintain ~~compatibility~~.

Commented [BT24]: I approve as edited.

~~a~~An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility A, B, or C). However, such program elements of an Agreement State relating to agreement material shall (1) be compatible with those of the NRC (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not ~~effectively~~ preclude, a practice in the national interest ~~without an adequate public health and safety or environmental basis related to radiation protection~~; and (3) not effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State shall adopt program elements assigned Categories A, B, and C.

Commented [BT25]: I approve as edited.

i. Category A - Basic Radiation Protection Standards.

This category includes basic radiation protection standards that encompass dose limits, concentration and release limits related to radiation protection in 10 CFR Part 20, that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR 61.41.⁷ Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include

⁷ The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States ~~the~~ flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

constraints or other limits below the level associated with "adequate protection" that take into account ~~permissible balancing considerations~~ such as economic cost and other factors.

Commented [BT26]: I approve as edited.

ii. Category B – Cross Jurisdictional Program Elements.

This category pertains to program elements that cross jurisdictional boundaries. This category will be limited to ~~a small number of only those~~ program elements that have an impact on public health and safety and should be addressed to ensure uniformity of regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification. Agreement State program elements shall be essentially identical to those of the NRC. Because program elements used in the NMP are necessary to maintain an acceptable level of protection of public health and safety, economic factors⁸ should not be considered.

Commented [BT27]: Same as edit previously discussed

iii. Category C - Other NRC Program Elements.

These are other NRC program elements that are important for an Agreement State to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements. Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

iv. Category D - Program Elements not Required for Compatibility.

These are program elements that do not meet any of the criteria listed in Category A, B, or C above and are not required to be adopted for purposes of compatibility.

v. Category NRC - Areas of Exclusive NRC Regulatory Authority.

⁸ For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-15-0087: AGREEMENT STATE PROGRAM
POLICY STATEMENT AND RECOMMENDATION

Approved XX Disapproved XX Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____

Entered in STARS

Yes X

No _____



Signature

8/27/15

Date

**Commissioner Baran's Comments on SECY-15-0087,
"Agreement State Program Policy Statement and Recommendation"**

The policy paper before us presents three staff recommendations related to the Agreement State program.

In the staff requirements memorandum to COMSECY-14-0028, the Commission approved the staff's proposal to combine the two policy statements that currently govern the Agreement State program into a single policy statement. The new combined policy statement includes the idea of the National Materials Program (NMP) for the first time. I approve for publication in the *Federal Register* the proposed policy statement, subject to the attached edits. Several of my suggested edits reflect that the NMP is more of a vision of a cooperative and synergistic relationship between NRC and the Agreement States rather than a concrete set of specific statutory or regulatory requirements.

The staff also seeks Commission approval of a proposal to develop a more comprehensive approach to assessing Agreement State compatibility. The staff's recommended option involves the Standing Committee on Compatibility creating a tiered approach for rule adoption by Agreement States. The idea is that the Committee would develop criteria for assessing whether Agreement States should have longer than three years to adopt a given regulation based on its complexity or safety significance. While a more complex, multi-factored approach could offer some benefits, I do not believe that a compelling case has been made that it is necessary to move away from the existing, easily understood three-year implementation standard. Therefore, I do not approve the staff's recommended Option 1.B and instead approve continuing the current approach (Option 1.A).

Finally, the staff recommends that the Commission approve a plan to improve the consistency of the Integrated Materials Performance Evaluation Program (IMPEP) evaluations through updates to IMPEP guidance and training. I agree that it would be beneficial to improve the clarity and consistency of the IMPEP evaluation criteria and to update the IMPEP team member training and qualification requirements. Therefore, I approve the staff's recommended Option 2.A.

I appreciate the staff's efforts to take a comprehensive look at the Agreement State Policy Statement and NRC's current approach to the IMPEP process. The policy statement and IMPEP play important roles in communicating NRC's expectations regarding how the agency and Agreement States will interact with one another and their respective roles and responsibilities in protecting public health and safety.

In COMSECY-14-0028, "Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward," dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY-14-0028, dated August 12, 2014 (ADAMS Accession Number ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the Principles of Good Regulation (ADAMS Accession Number ML15083026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, "Policy Statement on Agreement State Programs," of this document.

III. Discussion of Proposed Changes.

The NRC's proposed consolidated policy statement addresses the Commission direction in the SRM to SECY-10-0105 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff's disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission's proposed consolidated policy removes details on IMPEP and the "Principles of Good Regulation" (ADAMS Accession No. ML15083A026). The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP) concept that describes the vision ~~defines the mission and roles and responsibilities~~ of the NMP.

In response to the *Federal Register* notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy

supersedes the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program.”

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Section 274b. that provide for discontinuance 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 quantities of special nuclear material insufficient to form a critical mass; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and are compatible with the [National Materials Program \(NMP\)](#)~~NRC’s regulatory program~~.

Although not defined in the AEA, the [National Materials Program \(NMP\)](#) is a ~~term to concept~~ describing the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement materials. The ~~mission-vision~~ of the NMP is to provide a coherent national system for the regulation of agreement materials with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP ~~concept~~, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are based on their legislative authority, program needs and expertise as they carry out their respective programs. ~~The NMP also serves as a mechanism for participation and involvement by two national organizations which are composed of State radiation protection programs:—~~the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD) ~~will continue to play important roles in achieving the goals of the NMP.~~

B. BACKGROUND.

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the NMP Agreement State program. The 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, nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs ~~as part of the NMP~~. This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs. The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274. Subsection 274d. states that the NRC shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement materials as an integral part of their health and safety mission as it relates to controlling and 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 physical protection of agreement material.

C. STATEMENT OF LEGISLATIVE INTENT.

In 1954, 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 clearly defining the boundaries of Federal and State responsibility. 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 AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could relinquish/discontinue regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of certain facilities and activities including, nuclear reactors, quantities of special nuclear material sufficient to form a critical mass, 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 NRC to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the NRC 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 under their Agreement and to permit the NRC to discontinue its regulatory responsibilities in those areas.

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

D. PROGRAM IMPLEMENTATION.

1. Implementation of the NMP Agreement State program is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement materials; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State preferences.

i. Principles of Good Regulation.

In 1991, the Commission adopted the “Principles of Good Regulation” to serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC’s regulatory activities have been of the highest quality, and are appropriate and consistent. The “Principles of Good Regulation” recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC’s implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles may be useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP and individual NRC and Agreement State materials programs.

ii. Performance Assessment.

To ensure that Agreement State programs ~~under the NMP~~ continue to provide adequate protection of public health and safety and are compatible with the NRC’s regulatory program, periodic program assessment is needed. ~~to ensure that programs under the NMP continue to be adequate and compatible.~~ The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation 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.

iii. Adequate to Protect Public Health and Safety.

program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

3. 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 their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, 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 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.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program. ~~(e.g., Sealed Source and Device or Section 11e.2 of the AEA byproduct authority relating to regulatory authority uranium milling activities in an Agreement State (SRM-SECY-95-0136)).~~

4. Performance Evaluation.

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. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance ~~in terms of to~~ public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also ~~ensure have the effect of ensuring~~ compatible approaches to licensing and inspection, ~~for the NMP.~~

6. Regulatory Development.

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations, orders, 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. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware 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.

Two national organizations composed of State radiation protection programs facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a mechanism for Agreement States to work with each other and with the NRC on regulatory issues. The OAS provides a forum for centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its

members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

E. ADEQUACY AND COMPATIBILITY.

In accordance with Section 274 of the AEA, an Agreement State program must provide for an acceptable level of protection of public health and safety in an Agreement State. This is the “adequacy” component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the “compatibility” component.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the NRC provides Agreement States a broad range of flexibility in the administration of their individual programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs and preferences.

The NRC will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in ~~these~~ this compatibility category~~ies~~ allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent and compatible in the regulation of agreement material across the country.

Program elements⁶ for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the

⁶ For the purposes of this Policy Statement, “program element” means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

To demonstrate adequacy, State-state statutes ~~shall~~should: (a) authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC; (b) authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety;

(c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and (d) be otherwise consistent with applicable Federal statutes.

In addition, the State should have existing legally enforceable measures such as generally applicable rules, orders, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt legally binding requirements based on those identified by the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shouldall implement the essential objectives articulated in the NRC requirements.

ii. Licensing.

The State ~~shall~~should conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee's operations can be conducted safely and securely. Licenses shall provide for reasonable assurance of public health and safety protection in relation to the licensed activities.

iii. Inspection and Enforcement.

The State ~~shall~~should periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

iv. Personnel.

The State ~~shall~~should be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

v. Incidents and Allegations.

The State ~~shall~~should respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

2. Compatibility.

A "compatible" program should consist of those program elements necessary to ~~support the NMP's goal to~~ promote an orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility A, B, or C). However, such program elements of an Agreement State relating to agreement material ~~shall~~should (1) be compatible with those of the NRC (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not effectively preclude, a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection; and (3) not effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State ~~shall~~should adopt program elements assigned Categories A, B, and C.

i. Category A - Basic Radiation Protection Standards.

This category includes basic radiation protection standards that encompass dose limits, concentration and release limits related to radiation protection in 10 CFR Part 20, that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR

61.41.⁷ Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with “adequate protection” that take into account permissible balancing considerations such as economic cost and other factors.

ii. Category B – Cross Jurisdictional Program Elements.

This category pertains to program elements that cross jurisdictional boundaries. This category will be limited to a small number of program elements that have an impact on public health and safety and should be addressed to ensure uniformity of regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification. Agreement State program elements shall be essentially identical to those of the NRC. Because program elements used in the NMP Agreement State program are necessary to maintain an acceptable level of protection of public health and safety, economic factors⁸ should not be considered.

iii. Category C - Other NRC Program Elements.

These are other NRC program elements that are important for an Agreement State to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements.

⁷ The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

⁸ For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

iv. Category D - Program Elements not Required for Compatibility.

These are program elements that do not meet any of the criteria listed in Category A, B, or C above and are not required to be adopted for purposes of compatibility.

v. Category NRC - Areas of Exclusive NRC Regulatory Authority.

These are program elements over which the NRC cannot discontinue its regulatory authority to Agreement States pursuant to the AEA or provisions of 10 CFR. However, an Agreement State may inform its licensees of these NRC requirements through a mechanism that is appropriate under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

F. CONCLUSION.

~~The NMP is dynamic and~~ the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement materials to identify specific changes that should be considered based on experience or to further improve overall safety, performance, compatibility, and effectiveness.

The NRC encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the NRC to foster and enhance an NMP that establishes a coherent and compatible nationwide program for the regulation of agreement material.

Dated at Rockville, Maryland, this _____ day of 2015.

For the Nuclear Regulatory Commission.