

June 30, 1997

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - 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 has approved the final "Statement of Principles and Policies for the Agreement State Program," final "Policy Statement on Adequacy and Compatibility of the Agreement State Programs," and the accompanying implementation procedures, subject to the following comments:

1. the "NRC" compatibility category identifies regulations that are reserved to the NRC but allows states to adopt them for clarity, but the policy omits certain NRC regulations that Agreement States may not adopt because the areas in which they apply are reserved to the NRC. The Policy and procedure should be revised to identify specifically the regulations in the "NRC" category that the States may adopt for clarity and a separate category ("NRC-X or some similar designation) created for those regulations, such as 10 CFR Part 70.21 and much of 10 CFR Part 50 that are reserved for the NRC and that States may not adopt and still be found to have compatible regulatory programs. The flow chart in Appendix A to Handbook 5.9 should also be revised to reflect this distinction.

(EDO)

(SECY Suspense: 8/29/97)

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SECY NOTE: THIS SRM, SECY-97-054, AND THE COMMISSION VOTING RECORD CONTAINING THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

2. The flow chart in Appendix A to Handbook 5.9 should be revised to clarify that regulations required for health and safety may also be included in compatibility categories A,B, and C as well as in the Health and Safety category. For the same reason, the staff should also add the following sentence to the last paragraph of page 27 in the Federal Register Notice: "Many program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy."

(EDO) (SECY Suspense: 8/29/97)

- 3.a. The staff should prepare a letter to the Agreement States identifying the regulations that have been upgraded from former category 3 to new categories A,B, or C, or from former category 2 to new categories A or B since these changes will require the States to take action for any regulations that would fall into a higher compatibility category. The letter should also indicate the potential impact of the changes upon a finding of compatibility, and the date that State action is to be completed.

(EDO) (SECY Suspense: 9/30/97)

- 3.b. At the same time, the staff needs to continue to review its regulation and other program element tables to identify inconsistencies, errors, or omissions, and to verify the appropriateness of the compatibility assignments. In that regard, the compatibility assignments for 10 CFR 30.10, 40.10, and 70.10 are inconsistent with each other, and the compatibility assignments for mobile nuclear medicine (35.29, 35.80) and the definition of brachytherapy source (35.2) warrant further evaluation.

(EDO) (SECY Suspense: 8/29/97)

4. With respect to the question of whether existing agreements with the States will need to be amended after the proposed policy is approved, the staff should write the standard agreement so as to ensure that existing agreements remain valid and that amendments will be limited to those required by a truly compelling legal or policy needs. If modification of the Policy Statements will be needed, the Commission should be promptly informed.

(EDO) (SECY Suspense: 9/30/97)

5. The staff should prepare guidance for the Management Review Board regarding adequacy and compatibility determinations. Such guidance would also enable the States to perform self assessments of their programs,

- should they choose to do so, with some confidence that the NRC's review would produce similar conclusions.  
(EDO) (SECY Suspense: 1/30/98)
6. The staff should continue to defer findings on Agreement State QM rules until NRC issues a revised Part 35 rule as directed in the SRM on DSI-7 and an effective date for Agreement State implementation has been set. Such a date could be earlier than the normal 3-year interval for Agreement State implementation of an NRC rule.  
(EDO) (SECY Suspense: 8/29/97)
7. The staff should modify the definition of "basic radiation protection standards" contained in the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" to reflect recent Commission decisions on the imposition of constraints, such as the "constraint" rule on air emissions and the license termination rule.  
(EDO) (SECY Suspense: 8/29/97)
8. The draft of Management Directive 5.9 contained in SECY-97-054 should be modified to reflect the Commission's direction to the staff in the SRM on DSI 22 to develop an implementation plan that would reassign responsibility for preparation and coordination of rulemaking from Research to the Program Offices. Suggested editorial changes to accomplish this objective are attached.  
(EDO) (SECY Suspense: 8/29/97)
9. Since the staff's proposal would make Agreement State reporting of events to NRC's Nuclear Materials Event Database an item of compatibility, references in the text to voluntary reporting should be eliminated, and the staff should make it clear that reporting of materials events is mandatory.  
(EDO) (SECY Suspense: 8/29/97)
10. The staff should submit an information paper to the Commission describing their actions to maintain frequent contact with the individual Agreement States to assess their program status and the procedure that will be used for this purpose and the staff's plans for review of draft State regulations as well as closing out the review of revisions of State regulations for compatibility with Part 20. The paper should also include the resource requirements in headquarters and the field needed to meet these responsibilities. The staff should also inform the Commission how it monitors

and reviews State actions, including the review of draft regulations, and inform the Commission of any unexpected or significant problems that develop.

(EDO) (SECY Suspense: 9/30/97)

11. The staff should provide its recommendations with respect to ethics, conflict-of-interest, and financial disclosure requirements for the Agreement State Program in a timely manner.

(EDO) (Secy Suspense: 7/30/97)

Attachment:  
As stated

cc: Chairman Jackson  
Commissioner Rogers  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
CIO  
CFO  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR  
DCS

Directive 5.9, Adequacy and Compatibility of Agreement State Programs should be changed as noted below.

1. On page 3, under Office of the General Counsel, line 2, insert 'that' after the word 'regulations.'
2. On page 3, under Director, Office of Nuclear Regulatory Research, change the parenthetical to (035) and move this section to that position.
3. On page 3, under Director, Office of Nuclear Regulatory Research, delete the entire first bullet.
4. On page 3, under Director, Office of Nuclear Regulatory Research, in the second bullet (now the first), line 2, insert 'and regulations that' after 'elements.' Also, insert 'the purpose of' after 'for.'
5. On page 4, under Director, Office of Nuclear Material Safety and Safeguards (NMSS), change the parenthetical to (034) and move this section to that position.
6. On page 4, under Director, Office of Nuclear Material Safety and Safeguards (NMSS), insert a new first paragraph which states: "Reviews, evaluates and determines, in coordination with other NRC offices, these regulations that an Agreement State should adopt as legally binding requirements for the purpose of compatibility or health and safety. (a)"
7. On page 4, under Director, Office of Nuclear Material Safety and Safeguards (NMSS), in what is now second paragraph, line 2, delete 'and regulations.'
8. On page 4, under Director, Office of Nuclear Material Safety and Safeguards (NMSS), in what is now second paragraph, after the end of line 3, add '(b).'
9. On page 4, under Director, Office for Analysis and Evaluation of Operational Data (AEOD), line 2, insert 'that' after 'regulations.'
10. On page 4, under Regional Administrators, line 2, insert 'that' after 'regulations.'