November 29, 1991

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary /S/

SUBJECT: SECY-91-341 - INITIAL RESPONSE TO STAFF REQUIREMENTS MEMORANDUM M910611A DATED JUNE 25, 1991 ON COMPATIBILITY

This is to advise you that the Commission has not objected to the proposed Federal Register Notice with the attached changes.
(EDO) (SECY Suspense: 12/16/91)

Attachment:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
OIG

SECY NOTE: THIS SRM AND SECY-91-341 WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

Insert A

SUMMARY: The Nuclear Regulatory Commission (NRC) may relinquish its authority to regulate certain radioactive materials under the Atomic Energy Act (AEA) to States through an Agreement process. The NRC is reviewing its practices concerning implementation of the requirements in the AEA to assure that the Agreement States' programs are compatible with the NRC's. The NRC has received recommendations from the Agreement States in this regard. The purpose of this notice is to seek comments and recommendations from the full spectrum of interested parties on how the NRC should proceed in implementing this requirement for compatibility to ensure an effective regulatory partnership with the Agreement States.

Insert B

It is important to recognize that NRC's relationship with Agreement States is not one in which NRC's regulatory responsibilities are delegated to the State. Rather, the authority is relinquished to the Agreement States and NRC works in partnership with the States. The NRC responsibilities for assuring adequacy and compatibility are on a programmatic level. NRC does not have case-by-case concurrence in the States' regulatory actions. However, in conducting periodic reviews of Agreement State programs for adequacy and compatibility, NRC does review licensing and regulatory actions taken by the State as indicators of the program's status. NRC also normally reviews changes to the State's regulations before they are issued for adequacy and compatibility in order to minimize additional rulemaking for the States should NRC have concerns about the changes. The NRC program reviews also consider whether the States have taken timely action to adopt rules which have been designated a matter of compatibility.

Insert C

Historically, compatibility decisions were made on an ad hoc basis and the agency's compatibility policies and practices developed by accretion. Most of the radiation protection standards for a program are defined in the regulations. Consequently, much of the focus and controversy over compatibility matters involve proposed regulations. In 1984, in

Insert D

1. As noted above, Congress established the Agreement State program in part because of the various and conflicting programs being implemented by States. Do you believe that there should be a uniform national approach to radiation safety matters? Should the scope of uniformity be narrowly focused or comprehensive? Please explain the advantages and disadvantages of views expressed.

2. As indicated in the description of the four Divisions for compatibility decisions on regulations, compatibility can be implemented in a tiered manner, with the tiers ranging from being identical to complete Agreement State flexibility.

    a) Is the tiered approach described in the Divisions a reasonable approach for regulations? for programs as a whole?

    b) What areas of Agreement State radiation control and protection should be identical to those of NRC and why?

    c) What areas of Agreement State radiation control and protection should be allowed to be different from those of the NRC and why? Should the differences include: more stringent standards? less stringent standards? more comprehensive requirements? or less comprehensive requirements? Please explain the basis for your views.

3. What mechanisms should the NRC use to allow Agreement States to have flexibility to address local needs or conditions? What factors should the Commission consider in balancing local needs or conditions and interstate or international commerce concerns or other national interests?

4. Should Agreement States be given a greater degree of flexibility in fashioning their own standards for low-level waste disposal, in view of the States' increased responsibility in this area, according to the Low-Level Radioactive Waste Policy Amendments Act of 1985?

5. Provided the issue of compatibility is fully aired in rulemaking notices, is the current comment process sufficient for continuing dialogue with those persons outside the NRC/Agreement State regulatory partnership? If not, what alternative would you suggest and why?

6. Should the NRC develop exemption criteria for an Agreement State that does not adopt a rule deemed a matter of compatibility, as described for NRC's Division 1 and 2 rules, if an Agreement State requests such an exemption? What factors should be considered in the criteria to assure that the exemption is justified?

Insert E

Single copies are available upon request. They may be obtained by writing to Cardelia Maupin, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or by telephoning (301) 492-0312.

Insert F

NRC's responsibility for assuring compatible programs encompasses the entire Agreement State's program, including licensing activities as diverse as medical uses of radiopharmaceuticals, industrial uses of gauges, low-level waste disposal sites, and university research.

Insert G

Concern regarding NRC's approach to compatibility was most recently highlighted in the public response to the Commission's Below Regulatory Concern (BRC) policy statement published in July, 1990. In light of this and other concerns, the Commission has placed a moratorium on the implementation of the policy statement in order to seek more information from all affected parties on BRC-related issues, including compatibility. NRC's pending reconsideration of the general compatibility issue will not affect the moratorium on the BRC policy statement. That moratorium continues to be in effect.