

POLICY ISSUE
(Notation Vote)

August 24, 2007

SECY-07-0144

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION POLICY ON FUNDING
OF CERTAIN AGREEMENT STATE TRAINING AND TRAVEL COSTS

PURPOSE:

To provide the Commission with options for a revised policy for funding of certain Agreement State training and travel, to request the Commission approve staff's recommended option of fully funding training and travel for Agreement State personnel, and to inform the Commission that the staff will begin scheduling the State Liaison Officers' meeting every other year and will begin providing travel funding for one Agreement State representative from one Agreement State to attend the annual U.S. Nuclear Regulatory Commission (NRC) and Organization of Agreement State (OAS) meeting in addition to the audiovisual and other meeting support funding. This paper does not address any new commitments.

SUMMARY:

This paper provides a condensed history of NRC's funding of Agreement State personnel training and associated travel to attend NRC-sponsored training courses related to materials licensing and inspection. This paper also responds to the Chairman's commitment to State

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representatives at the August 1-2, 2006, State Liaison Officers' meeting, in which the Chairman indicated that the NRC would consider its funding policy for Agreement State personnel training and associated travel. The staff has prepared an analysis of four different options for Commission consideration ranging from continuing the status quo of not providing funding to fully funding training and travel costs for Agreement State personnel to attend NRC-sponsored courses. The staff recommends the option of returning to the NRC's previous policy of fully funding training and travel for Agreement State personnel.

BACKGROUND:

History of Funding for Agreement State Training

Since the creation of the Agreement State program in the early 1960s, the NRC has assisted the Agreement States by funding training and travel. Two NRC informational documents, NUREG-1311, "Funding the NRC Training Program for States," issued in 1988, and NUREG-1356, "State Cost Sharing of Training," issued in 1989, discuss the Agreement State travel and training program and its funding. These documents discuss, among other items, the legislative history of the Agreement State program, the training program to support it, and the costs of training through 1989. The summary of State perspectives from NUREG-1311 states the following:

The States view NRC training as essential to their ability to maintain programs which are adequate to protect public health and safety. NRC funding of travel and per diem costs for State personnel approved to attend NRC training is a critical element in many States to obtain approval to travel out-of-state to NRC training. Any change that would reduce or eliminate such NRC funding will, in some States' view, lead to a significant reduction of State staff attending NRC training, and this will eventually impact upon the States' abilities to adequately protect public health and safety.

Increased State user fees to enable State funding of these costs is not always a feasible alternative. User fees do not normally go to State Radiation Control Program's (RCP) budget but go to State treasuries. State RCP funds are then appropriated, but control and approval of expenditure of funds to pay out-of-state travel, necessary to attend NRC training, is outside the RCP and sometimes outside the State Agency.

State turnover creates a continuing need for NRC training for replacements.

State in-house training is extensively used but is not a substitute for NRC training.

These documents estimated that, if there were no Agreement State program, the NRC's additional costs to regulate the Agreement State licensees would have been approximately \$13 million in 1988 and \$18 million in 1989. A more recent estimate is not available.

In 1994, the then Office of State Programs and the former Office for Analysis and Evaluation of Operational Data (AEOD) began working to combine the training conducted by the two offices into a single program which would be consistent for all regulatory personnel, whether from the NRC or an Agreement State (i.e., a national training program). This combined program helped ensure acceptable minimum qualifications for Agreement State licensing and inspection staffs. The offices developed and implemented a transition plan, and the combined program began in fiscal year (FY) 1995. The primary goal of combining the training programs was to provide consistent minimum technical training for all materials regulatory personnel.

The attendance of Agreement State personnel at courses conducted by AEOD was not considered unique since, in the past, certain technical training had been available on a limited basis to non-NRC personnel at no cost. Examples of non-NRC personnel include foreign students, non-Agreement State personnel, and personnel from other Federal agencies.

In conjunction with this coordinated training, the Office of Nuclear Material Safety and Safeguards and AEOD, with input from Agreement States, had completed development of an Inspection Manual Chapter that specifically addressed training requirements for NRC materials licensing and inspection personnel. An NRC/OAS working group used this Inspection Manual Chapter to help identify basic courses or essential training necessary for Agreement State personnel qualification. This basic set of training courses for qualifications of NRC and Agreement State materials program staff was consistent with the goal of establishing a nationally coherent materials regulatory program as described in the May 5, 1995, SECY-95-115, "Final Statement of Principles and Policy for the Agreement State Program." Several of the required courses in the NRC list, although important, are not necessary for Agreement State personnel since they address issues that are primarily unique to the NRC.

The NRC has also had a longstanding practice of funding travel for Agreement State personnel to attend meetings with the NRC to discuss regulatory issues. The NRC began informal meetings with the Agreement States in the late 1960s. These meetings became more formal in the 1970s with the annual All Agreement State meeting. In the past, the NRC arranged for these meetings and paid travel and per diem for an individual from each State to attend. The NRC has also paid for travel for Agreement State personnel to attend other meetings with, and workshops conducted by, the NRC. At many of these meetings and workshops, the staff has found that information about Agreement State experiences has benefitted NRC activities such as rulemaking and guidance development.

Change in Policy for Funding Agreement State Training and Travel

On November 5, 1990, Congress passed the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) requiring that the NRC recover 100 percent of its budget authority (less appropriations from the Nuclear Waste Fund) by assessing fees to NRC applicants and licensees. The NRC, in compliance with the Energy Policy Act of 1992, reported to the Congress in February 1994 on the license fee policy, recommending that OBRA-90 be

amended to delete certain budgeted costs from the NRC fee base, including those associated with the Agreement States program. Congress did not act on this recommendation at that time.

Consequently, on January 25, 1995, the staff submitted SECY-95-017 (ML022830628), "Reinventing NRC Fee Policies," to the Commission. That paper addressed the longstanding equity concern associated with NRC licensees' receiving no benefit from the Agreement State program even though the program is funded from NRC licensee fees. One of the recommendations was to recover the costs for NRC services that directly support the Agreement States through reimbursable agreements.

The Commission approved the staff recommendation, and the NRC informed the Agreement States of the decision by an All Agreement States letter dated March 14, 1995. In addition, publication of this decision in the *Federal Register* (60 FR 14670, March 20, 1995) resulted in the receipt of comments from the Agreement States and from NRC licensees.

The reactions of the Agreement States and the NRC licensees to the new Commission policy on funding of Agreement State training and travel were predictable. Overall, licensees supported the Commission decision, and Agreement States opposed it. The most significant comments about the impact of the cost reimbursement policy decision addressed concern about the quality of future Agreement State staff training. Training quality is acknowledged as one of the strengths of the Agreement State program, and the consolidation of training for NRC and Agreement State materials program staff, using the revised basic training concept, further strengthens the training program.

The Commission announced in the *Federal Register* notice for the final 1995 fee rule (60 FR 32218, June 20, 1995) that, in FY 1997, the NRC would discontinue funding for Agreement State training and travel and require that the Agreement States reimburse the NRC for some of the training services. The process to implement this policy is discussed in SECY-95-192, "Agreement State Reimbursement of NRC Costs" dated July 24, 1995 (ML023250185); SECY-97-183, "Criteria for Funding Agreement State Training, Travel, and Technical Assistance," dated August 7, 1997 (ML992930015); and SECY-98-295, "Effectiveness of Criteria for Funding Agreement State Training," dated December 18, 1998 (ML992870018). These papers also discussed the effects of discontinued funding on the Agreement States.

Subsequently, in 1999, Congress enacted legislation that removed 2 percent of the NRC's budget authority from the fee base with an additional 2 percent to be removed each year until 10 percent of the NRC's budget authority had been removed from the fee base in FY 2005. The Energy Policy Act of 2005 made 90-percent fee recovery permanent beginning in FY 2007. This is reflected in the Commission's final fee rule for FY 2007, which the NRC published in the *Federal Register* (72 FR 31401, June 6, 2007). As a result of the legislation and the increasing NRC budgets, the costs of all NRC activities pertaining to the Agreement State program have been removed from the fee base.

DISCUSSION:

Agreement State Personnel

During the question and answer session with Chairman Klein at the August 2006 State Liaison Officers' meeting, State representatives raised the issue of the NRC's restoring funding for training and associated travel to assist the States in maintaining a sufficient number of adequately trained staff. The NRC staff has reviewed the history of the Agreement State program funding for training and travel and the license fee equity issue. Since the NRC now has 10 percent of its budget off the fee base, the equity issue appears to be less of a concern. In addition, the NRC's annual budget appropriation has increased in recent years which has made more funds available off the fee base for funding training and associated travel to assist the States. As a result, the staff has developed the following four options for funding such training and travel for Commission consideration:

- Option 1 - *Maintain the Status Quo*, which would continue the current policy of States funding of their own training and associated travel.
- Option 2 - *Full Funding*, returning essentially to the previous policy of the NRC fully funding training and associated travel.
- Option 3 - *Tuition Funding*, which would modify the current policy to provide for NRC funding of the tuition for Agreement-related training with the States paying for the associated travel.
- Option 4 - *Limited Tuition and Travel Funding*, which would modify the current policy to fund Agreement State training and associated travel for a limited number of training courses.

The enclosure to this paper discusses the advantages and disadvantages of these options. Funding for limited numbers of Agreement State personnel is consistent with the Commission direction for Increased Controls (IC) training and the proposed training associated with the National Source Tracking System (NSTS) addressed in COMSECY-07-0009, "Strategy for Funding the Agreement States for Training and other Activities that Support the Development and Initiation of the National Source Tracking System" dated March 2, 2007 (ML063560444). The staff recommends Option 2, Full Funding.

Non-Agreement State Personnel

In preparing this paper, the staff considered funding of Agreement State staff training and associated travel including States considering developing a regulatory program to become an Agreement State and those States in the process of becoming an Agreement State (that is, States that have submitted a letter of intent to the NRC from the Governor). Section 274i of the Atomic Energy Act, as amended (AEA), allows the NRC to provide training, with or without charge, for employees of any State as deemed appropriate considering the additional expenses

that a State may incur as a consequence of an AEA Section 274b Agreement with the Commission. Although the staff's understanding is that the NRC may fund training and associated travel for personnel of Agreement States (including those who have submitted a letter of intent), the staff does not believe that the NRC is authorized to fund training and associated travel for non-Agreement State personnel.

Invitational Travel

All options would continue to fund invitational travel, at various levels depending on the option, in accordance with the current NRC Management Directive 14.1, "Official Temporary Duty Travel." The staff would restore invitational travel funding for Agreement State personnel to attend the annual OAS meeting, as provided in the past for one individual from each Agreement State, as well as support funding for necessary meeting needs such as audiovisual support and meeting room costs. In addition, the State Liaison Officers' meeting, which has been held every 3 years, will be held every 2 years based on the recent positive feedback on the usefulness of the meeting in the current changing regulatory environment.

Alternatives for Training

Alternative training methods, such as Web-based courses and video conferencing, have been tried and found to be of limited utility because the length of most courses (a week or more) makes these methods impractical. Other problems with using Web-based training and video conferencing are related to technology limitations, time zone issues, and excessive costs.

Other presentation methods (such as video/audio tapes) have been considered; however, they need to be updated regularly, are expensive to prepare, and lack the teacher/student and student/student interaction benefits that are essential parts of the learning experience. Remote training locations, other than the NRC Technical Training Center (TTC), have generally been successful when courses do not require such resources as specialized labs or facilities and are currently part of the TTC training program. The NRC routinely supports individual Agreement State requests for the conduct of a training course at an alternate location (e.g., at State offices).

To the extent that NRC resources allow and course objectives are met, the NRC will continue to work closely with the OAS and the Conference of Radiation Control Program Directors (CRCPD) to seek innovative training methods that are not cost prohibitive, outdated too quickly, or prohibited by law. Currently, the NRC is working with CRCPD to prepare limited computer-based training modules, present NRC courses at various State locations, present additional NRC security-related courses at OAS annual meetings (e.g., training on the National Source Tracking System), and use train-the-trainer proposed courses.

Program Impacts

The enclosure discusses the program impacts for each of the four options. The most significant program change would be the funding and administration of the attendee selection

and travel processing if the Commission changes the funding policy. The overall number of Agreement State staff requesting to attend NRC-funded courses could increase as the result of an easier approval process for travel funded by the Federal Government and reduced impact on Agreement State budgets. This increase may require consideration of scheduling and contracting for additional courses if the Office of Human Resources (HR) receives additional funding and the Office of Federal and State Materials and Environmental Management Programs funding for State staff travel does not exceed the currently proposed level.

STATE COORDINATION:

In developing these options, the staff considered the recent letter from the Executive Director of the CRCPD, Ruth E. McBurney. In her letter (ML070670052) dated March 6, 2007, Ms. McBurney indicated the critical need for funding of Agreement State training programs, especially for States developing programs and are in the process of becoming Agreement States. In addition to suggesting that alternative training modalities be cooperatively developed, she suggested that: (1) the NRC might pay a percentage of the costs for state personnel to travel to NRC sponsored training; (2) NRC staff participate at annual OAS and CRCPD meetings for beneficial interaction (networking); (3) the NRC issue grants or contracts supporting ICs, security inspections, detection, source tracking, and terrorist incident response activities and the Department of Homeland Security provide assistance to States (neither are within the scope of this paper); (4) the NRC have alternative training locations throughout the country; (5) the NRC provide training courses that can be given in conjunction with the annual OAS and CRCPD meetings; and (6) the NRC and States jointly develop Web-based training programs. The development of this paper addressed these suggestions except where noted. To further coordinate with the States, the NRC staff provided a draft of the Commission paper to and held a conference call with the OAS Executive Board, Ms. McBurney and the CRCPD Chairman. During the conference call, the State representatives expressed support for restoration of full funding by NRC for Agreement State training and associated travel (Option 2). They also commented that, if the Commission chooses one of the partial funding options (Option 3 preferred, Option 4 second), the States would like the flexibility on a State-by-State basis to select whether the State or the NRC would pay the tuition costs or the associated travel costs. The State representatives also provided comments which have been incorporated in the Advantages and Disadvantages in the enclosure to this paper.

RESOURCES:

The staff estimates that \$630,000 would be needed during FY 2009 to support initial operations under Option 2, Full Funding, which is being requested as part of the budget process for FY 2009. The staff will explore training resources needs in the preparation of the FY 2010 budget. Although the staff considered funding in the amount of \$500,000 for FY 2008, there were no funds available from lower priority activities to be reprogrammed.

If additional courses are needed to meet Agreement State training needs, additional funding for contract costs may need to be reprogrammed to HR since the office's FY 2009 budget did not include any additional funding for the increased training demand by Agreement State staff. HR

may also need to increase the number of contract modifications to address the size, number, and location of classes provided under contract. Slight increases in regional FTE may be necessary to support the increase in teaching effort for NRC taught courses.

RECOMMENDATION:

The staff recommends that the Commission approve Option 2, which would provide full funding of Agreement State training and associated travel to support the Agreement States, thereby helping to promote a nationally consistent training program for NRC and Agreement State materials licensing and inspection staff.

Note

1. The staff will begin scheduling the State Liaison Officers' meeting every other year instead of every third year.
2. The staff will begin providing travel funding for one Agreement State representative from each Agreement State to attend the annual NRC/OAS meeting in addition to the audiovisual and other meeting support funding.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection.

This document contains predecisional budget information which is considered sensitive information and should not be released to the public.

/RA/

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Enclosure:
Training Options and Costs

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Enclosure:
Training Options and Costs

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EDATS: FSME-2007-0020

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