57 FR 6462
Published 2/25/92
Effective 2/25/92

*10 CFR Part 50*

**Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Amendment to policy statement.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is revising and amending its Policy on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities (54 FR 7530; February 22, 1989). The amendment to the policy statement allows State representatives in adjacent States to observe NRC inspections at licensed facilities. "Adjacent States" are defined as States within the plume exposure pathway (within approximately a 10-mile radius) Emergency Planning Zone (EPZ) of a licensed facility in another State.

**EFFECTIVE DATE:** February 25, 1992.

**FOR FURTHER INFORMATION CONTACT:** Frederick Combs, Assistant Director for State, Local and Indian Relations, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504-2325.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On February 22, 1989 (54 FR 7530), the Commission published the policy statement "Cooperation With States at Commercial Nuclear Power Plants and

Other Nuclear Production or Utilization Facilities." The policy statement was intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials to accompany NRC on inspections and, under certain circumstances, enables States to enter instruments of cooperation (MOUs) which would allow States to participate in NRC inspection activities.

*Analysis:* On August 26, 1991 (56 FR 41968), the Commission published for comment a proposed amendment to the policy statement on Cooperation With States. This amendment would allow State representatives to observe NRC inspections at licensed facilities in adjacent States. "Adjacent States" are defined as States within the plume exposure pathway (within approximately a 10-mile radius) Emergency Planning Zone (EPZ) of a licensed facility in another State.

The Commission received seven comments on the proposed amendment: three from utilities, one from a utility organization, two from States and one from a public citizen's group.

*Comments:* One comment was received from Ohio Citizens for Responsible Energy Inc ("OCRE") which was generally supportive of the amendment. OCRE did suggest, however, that an adjacent State be defined as one which is within the plume exposure pathway EPZ or within a 10-mile radius of a nuclear facility located in another State. They claim this addition is necessary due to the periodic political proposals to reduce the plume exposure pathway EPZ from its current 10-mile radius to some smaller area, perhaps as small as 2–5 miles or even limited to the site boundary.

*Response:* EPZs are the designated areas for which planning is recommended to ensure that prompt and effective actions can be taken to protect the public in the event of an accident. NRC licensees, State and local governments and petitioners for rulemaking have often questioned the exact size and configuration of the plume exposure pathway EPZ. The Commission answered these questions in a policy statement (Long Island Lighting Company, Shoreham Nuclear Power Station, Unit 1, CLI–89–12, 26 NRC 383, 384, 385) as follows:

> Implicit in the concept of "adequate protective measures" is the fact that emergency planning will not eliminate, in every conceivable accident, the possibility of serious harm to the public. Emergency planning can, however, be expected to reduce any public harm in the event of a serious but highly unlikely accident. Given these circumstances, it is entirely reasonable and appropriate for the Commission to hold that the rule precludes adjustments on safety grounds to the size of an EPZ that is "about 10 miles in radius." In the Commission's view, the proper interpretation of the rule would call for adjustment to the exact size of the EPZ on the basis of such straightforward administrative considerations as avoiding EPZ boundaries that run through the middle of schools or hospitals, or that arbitrarily carve out small portions of governmental jurisdictions. The goal is merely planning simplicity and avoidance of ambiguity as to the location for the boundaries.

As stated in the original **Federal Register** notice (February 22, 1989) during the comment period, NRC's reasoning behind limiting adjacent State observation to those States within the plume exposure pathway EPZ was twofold: First, a limit had to be set to allow Regional offices to manageably handle requests to observe inspections which might be made by host States and adjacent States. Second, the plume exposure pathway EPZ was determined to be that area (approximately 10 miles) requiring possibly prompt action in the event of an accident to reduce risk to the public. It is unlikely that any immediate protective actions would be required beyond the plume exposure pathway EPZ.

Therefore, it was felt those States with the most critical response efforts during emergency situations, and those with more immediate public health and safety risks, should be the States allowed to observe NRC inspections. These States would therefore become more familiar with plant safety issues.

*Comment:* A similar comment was received from the New York State Energy Office, which requests broadening the definition of "adjacent State" to include reciprocity for facilities further than the ten-mile radius around a plant to perhaps a fifty-mile radius.

*Analysis:* For the reasons stated above, NRC does not believe the plume exposure pathway or the definition of adjacent State should be changed. Furthermore, inclusion of all States which are within a fifty-mile radius of a reactor in another State would greatly increase the number of States eligible for observation of NRC inspections and also increase the administrative burden on the NRC, especially for highly-visible inspection efforts. The impact on NRC of having large numbers of requests for observations in inspections could become burdensome and negatively impact our own inspection program, and could adversely impact licensees.

*Comment:* The Nuclear Management and Resources Council (NUMARC) remains concerned if State representatives are allowed to carry out NRC inspection responsibilities. They also reiterated their previous concern with the original policy, that allowing State representatives, whether from a State in which a plant is located or an adjacent State within the plume exposure pathway, to conduct NRC inspections could result in a situation where a licensee could be subjected to dual, and perhaps conflicting, regulation by a State through this mechanism. NUMARC does believe that it is appropriate for the NRC and States to work together to coordinate the exercise of their complementary responsibilities, but feels that State representatives should not conduct NRC inspections.

*Response:* The concern of NUMARC regarding State representatives conducting NRC inspections was previously submitted and addressed in the summary of comments and NRC response section of the **Federal Register** notice adopting the final policy statement (54 FR 7530; February 22, 1989). There has been no change proposed to that aspect of the policy. This proposed change to the policy concerns only observations of inspections by representatives of adjacent States, not participation in inspection by these representatives. It

was decided that NRC does not have enough experience with participation agreements between the NRC and host States to expand that arena to adjacent States at this time. NRC will continue to monitor closely the implementation of this policy statement to ensure that it is not misapplied and that unintended results do not occur.

*Comment:* The Vermont Yankee Nuclear Power Corporation commented that they endorse the concept of the current policy of NRC cooperation with State governments, however they believe that the host state deserves special consideration where requests for observations are concerned. They request NRC to encourage the adjacent States to communicate with host state representatives on matters pertaining to the operation of host state nuclear power plants.

*Response:* In the **Federal Register** notice, NRC committed to limit team inspections to normally no more than one observer from each State. When there is a conflict, preference would be given to the host state for routine inspections, but the NRC Regional Administrator should make the final determination as to whether more than one State observer should be involved in the inspection. In addition, the protocol agreement in Appendix A of the **Federal Register** notice has been revised to accommodate a request from an adjacent State, strongly encourage communication with the host State, and give preference to the host State should a conflict exist. NRC will adhere to this policy and endorse two-way communication at every stage of the observation.

*Comment:* New Hampshire Yankee (NHY) transmitted several comments. One comment concerned the possible misinterpretation of the roles of host States and adjacent States. NHY states that the Discussion section makes it clear that adjacent States should be limited to an observation role whereas a host State, under certain conditions, may actually participate in inspections. The Statement of Policy, however, does not explicitly state these distinctions and limits. Similarly, under Implementation, the first sentence of the second paragraph states that the "NRC will consider State *participation* in inspections * * *" (emphasis added) without specifying that this refers to host States.

The second comment stated that NHY believes that the State Protocol should be changed to reflect that where an MOU allows actual host State participation in inspections, or even observations, the protocol for publicly releasing or commenting on the results should be the same as for State observations. Release of information concerning the inspection should not occur before review by the NRC and issuance of the NRC inspection report.

The third comment expressed concern over ambiguity in the language regarding the number of State inspectors from the host and adjacent States. The Discussion indicates that the number of observers should normally be limited to the number of NRC inspectors and that team inspections should normally have no more than one observer from each State. The second bullet of the State Protocol sets a norm of one observer per NRC inspection. NHY believes that this language could lead to misunderstandings and the the Statement of Policy should clearly set forth the NRC's expectations on the total number of observers from the host and adjacent State including the case where the host State is actually participating in the inspection.

The fourth comment stated that NHY believes that State observations of routine inspections by the NRC Resident Inspectors should be limited to one individual from the host State, and that if States feel additional observers are needed this should be taken up as a special case.

The fifth comment states that NHY believes the State Protocol should clearly state that observers must obtain approval from the licensee as well as the NRC before removing any material from the site. This could be accomplished by simply having the observer formally submit a request for documents to the licensee through the NRC.

In their final comment, NHY requested that Maine be removed from the table listing adjacent States since they do not fall within the stated definition of the plume exposure pathway emergency planning zone.

*Response*: NRC agrees there may be some ambiguity regarding the roles of adjacent and host States in the policy statement. Therefore, we are amending the second paragraph under "Implementation," to read, "NRC will consider *host* State (emphasis added) participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement." The modification clarifies NRC's intent to allow only host States to participate in NRC inspections.

With regard to the second comment, NRC enters into MOUs for participation where more detailed cooperation is required. In the MOUs, a provision is included for the State to abide by NRC protocol by not publicly disclosing inspection findings prior to the release of the NRC inspection report.

Regarding NHY's third comment relating to the number of State inspectors to observe an inspection, NRC believes the policy is clearly stated. Although the protocol states that normally one observer will be allowed to observe an NRC inspection, some amount of discretion is needed to allow more inspectors to attend under special circumstances. There are a sufficient number of inspections which are event-related or have attracted significant public interest, to which States may want to send more than one observer. The policy does not address the number of State inspectors allowed to participate in an NRC inspection. It is expected the State will utilize only the minimum number of inspectors it needs to accomplish the best possible coverage of the inspection activity. In this regard, the MOUs under a participation arrangement affirm that the State will submit monthly inspection recommendations to the NRC Resident Inspector (or Regional Office) in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's recommendations and inform the State of any activities that appear to impose an undue burden on the licensee. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments.

The fourth comment, pertaining to the number of State observers of routine inspections by NRC Resident Inspectors, has already been addressed. Requests for observations of routine inspections by the Resident will be treated the same as any other inspection.

NRC also agrees that the State observer should obtain licensee or NRC approval before removing material from the site. We have modified the protocol to incorporate this change.

Regarding NHY's final comment, we have deleted Maine from the table of adjacent States since it does not fall within the Seabrook Station's 10-mile plume exposure pathway emergency planning zone. The table is reprinted below.

*Comment*: Both Philadelphia Electric Company and the State of Arkansas commented that they support NRC's efforts to amend the policy.

The following list of host States and adjacent States (within the 10-mile plume exposure pathway emergency planning zone) along with these NRC-licensed facilities could be affected by

the proposed policy revision:

| Plant | State | Adjacent state(s) |
|---|---|---|
| Beaver Valley | PA | OH, WV |
| Catawba | SC | NC |
| Cooper | NE | MO |
| Farley | AL | GA |
| Ft Calhoun | NE | IA |
| Grand Gulf | MS | LA |
| Hope Creek | NJ | DE |
| Millstone | CT | NY |
| Peach Bottom | PA | MD |
| Prairie Island | MN | WI |
| Quad Cities | IL | IA |
| Salem | NJ | DE |
| Seabrook | NH | MA |
| Trojan | OR | WA |
| Vermont Yankee | VT | MA, NH |
| Yankee Rowe | MA | VT |
| Zion | IL | WI |

A total of 17 utilities and 25 States could be affected by the policy revision.

**Paperwork Reduction Act Statement**

This final policy statement amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150–0163.

The public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0163), Office of Management and Budget, Washington, DC 20503.

**Final Amendments to the Policy Statement**

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the final sentence in the second paragraph is revised to read as follows:

Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ)—(within approximately a ten-mile radius)—of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

In section III, Statement of Policy (54 FR 7530 at 7538, February 22, 1989), the third sentence in the third paragraph is revised to read as follows:

State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC.

In section IV, Implementation (54 FR 7530 at 7538, February 22, 1989), the fifth, and final sentences in the first paragraph are revised to read as follows:

Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicants and licensees.

Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

Also, in section IV, Implementation, the first sentence in the second paragraph is revised to read as follows:

NRC will consider host State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement.

In Appendix A—Protocol Agreement for State Observation of NRC Inspections, the State Protocol Section, the eighth bullet is revised to read as follows:

• An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.

The full text of the Policy Statement with new wording is reprinted below.

Dated at Rockville, MD, this 18th day of February 1992.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

**Statement of Policy**

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of Public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, representatives from a State in which the NRC-licensed facility is located (the host State) and from a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State (the adjacent State) will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings. State participation in NRC programs would allow qualified State representatives from States in which an NRC-licensed facility is located, either individually or as a member of a team, to conduct specific inspection activities in accordance with NRC standards, regulations, and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved. In the proposal to enter into an instrument of cooperation, the State must identify those activities for which cooperation with the NRC is desired. The State must propose a program that: (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; (2) is in accordance with Fedeal standards and regulations; (3) specifies minimum

education, experience, training, and qualifications requirements for State representatives which are patterned after those of NRC inspectors; (4) contains provisions for the findings of State representatives to be transmitted to NRC for disposition; (5) would not impose an undue burden on the NRC and its licensees and applicants; and (6) abids by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Consistent with section 274c of the Act, the NRC will not consider State proposals for instruments of cooperation that do not include the elements listed above, which are designed to ensure close cooperation and consistency with the NRC inspection program. As a practical matter, the NRC is concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorites, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

**Implementation**

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. Host State or adjacent State representatives are free to attend as observers any public meeting between the NRC and its applicant and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. Requests from host States and adjacent States to observe inspections and/or inspection entrance and exit meetings conducted by the NRC require the approval of the appropriate Regional Administrator.

NRC will consider host State participation in inspections and the inspection entrance and exit meetings, where the State-proposed agreement identifies the specific inspections they wish to assist NRC with and provides a program containing those elements as described in the policy statement. NRC may develop inspection plans along with qualified State representatives using applicable procedures in the NRC Inspection Manual. Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually. Other activities may be conducted as a team with NRC taking the lead. All enforcement action will be undertaken by the NRC.

The Commission will decide policy matters related to agreements proposed under this policy statement. Once the Commission has decided the policy on a specific type of agreement, similar State-proposed agreements may be approved, consistent with Commission policy, by the Executive Director for Operations. A State-proposed instrument of cooperation will be documented in a formal MOU signed by NRC and the State.

Once the NRC has decided to enter into an MOU for State involvement in NRC inspections, a formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access of State representatives at the site.

## Appendix A—Protocol Agreement for State Observation of NRC Inspections

*NRC Protocol*

- The Regional State Liaison Officer (RSLO) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests. The appropriate technical representative or Division Director will communicate with the State on specific issues concerning the inspection(s).
- Requests for observations of Headquarters-based inspections will also be coordinated through the RSLO. Headquarters-based inspections should be referred through the RSLO to a technical representative designated by the Region.
- NRC will process written requests to the Regional Administrator through the State Liaison Officer (SLO). Requests should identify the type of inspection activity and facility the State wishes to observe.
- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection. Regions should use their discretion as to which, if any, inspections will be excluded from observations.
- States will be informed they must not release information concerning the time and purpose of unannounced inspections.
- The Region will make it clear to the licensee that the State views are not necessarily endorsed by NRC. The Region will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety.

*State Protocol*

- A State will make advance arrangements with the licensee for site access training and badging (subject to fitness for duty requirements), prior to the actual inspection.
- Normally, no more than one individual will be allowed to observe an NRC inspection.
- The State will be responsible for determining the technical and professional competence of its representatives who accompany NRC inspectors.
- An observer's communication with licensee with be through the appropriate NRC team member, usually the senior resident inspector or the team leader.
- When informed of an unannounced inspection, a State must not release information concerning its time and purpose.
- An observer will remain in the company of NRC personnel throughout the course of the inspection.
- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.
- An observer will not be provided with proprietary or safeguards information. Observers will not remove any material from the site without NRC or licensee approval.
- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. NRC will not be responsible for injuries

or exposures to harmful substances which may occur to the accompanying individual during the inspection and will assume no liability for any incidents associated with the accompaniment.

- The State observer will be expected to adhere to the same conduct as NRC inspectors during an inspection accompaniment.
- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he/she will make those observations promptly known to the NRC team leader or lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the team leader or lead inspector and forward those views, in writing, to the NRC Region. This will allow NRC to take any necessary regulatory actions.
- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC.

*Adjacent State Protocol*

- An adjacent State is a State within the plume exposure pathway emergency planning zone (EPZ) (within approximately a 10-mile radius) of an NRC-licensed facility located in another State. A host State is a State in which an NRC-licensed facility is located. An adjacent State may request permission to observe NRC inspections at an NRC-licensed facility in a host State.
- The adjacent State SLO must communicate his/her request for observation to the Regional Administrator for the region in which the facility is located.
- The adjacent State SLO must also communicate his/her request to the host State SLO so that each State is aware of the other's intentions.
- If a host State and an adjacent State request observation of the same inspection, the Regional Administrator will make the final determination on the number of State observers who may attend the inspection. If there is a need to limit the number of observers, the Regional Administrator will routinely give preference to the host State observers.
- Adjacent State observers will abide by the same protocol in all aspects of the inspection as host States under this agreement.

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Signature of State Observer

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Date