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NUCLEAR REGULATORY COMMISSION

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission has revised its statement of policy regarding criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption of regulatory authority by States through agreement. This action is necessary to make editorial changes to update the policy statement, to allow States to enter into agreements for low-level waste only, and to incorporate the provisions and requirements of the Uranium Mill Tailings Radiation Control Act of 1978. Adoption of this policy will allow interested States to enter into agreements with the NRC and regulate low-level waste sites only. Additionally, those States that meet the criteria for the regulation of uranium mills and tailings may exercise regulatory authority over these sources as provided by the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

The revised statement of policy reflects the following principal changes:

1. Modification of Criterion 27 to allow a State to seek an agreement for the regulation of low-level waste as a separate category.

2. Inclusion of additional criteria for States wishing to continue regulating uranium and thorium processors and mill tailings after November 8, 1981.

3. Editorial and clarifying changes to make the statement current.

DATES: This policy statement is effective January 23, 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. These criteria were developed to implement a program, authorized by Pub. L. 86-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by

the President on September 23, 1959 and amended by Pub. L. 95-604 approved November 8, 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

2. An agreement may be effected between a State and NRC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials; and (2) after a finding by the Commission that the State program is in accordance with the requirements of subsection o of section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. It is also necessary that the State have enabling legislation authorizing its Governor to enter into such an agreement.

3. The original criteria were published on March 24, 1961 (26 FR 2537) after discussions with various State officials and other State representatives, to provide guidance and assistance to the States and the AEC (now NRC) in developing a regulatory program which would be compatible with that of the NRC. The criteria were circulated among States, Federal agencies, labor and industry, and other interested groups for comment.

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of

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each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

5. These revised criteria provide for entering into an agreement for a separate category of materials, namely, low-level waste material in permanent disposal facilities. They also provide new criteria for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. The revised criteria also contain a number of editorial changes such as changing AEC to NRC where appropriate to conform to present practice and law.

6. Inquiries about details of the criteria or other aspects of the NRC Federal-State Relations Program should be addressed to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Criteria [FN1]

FN1 The criteria were first adopted in February 1961 (26 FR 2537, March 24, 1961, and amended in November 1965 (30 FR 15044, December 4, 1965). Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and Organization change in NCRP.

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Radiation Protection Standards [FN2]

FN2 Suggested State regulations and State legislation will give content to all criteria enunciated.

2. Standards. The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. Uniformity in Radiation Standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on officially approved radiation protection guides.

4. Total Occupational Radiation Exposure. The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

5. Surveys, Monitoring. Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

6. Labels, Signs, Symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. Instruction. Persons working in or frequenting restricted areas [FN3] shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, section 19.16 and to be represented during inspections as specified in section 19.14 of 10 CFR 19.

FN3 "Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials.

"Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

8. Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.

9. Waste Disposal. The standards for the disposal of radioactive materials into the air, water, and sewers, and burial in the soil shall be in accordance with Part 20. Holders of radioactive material desiring to release or dispose of quantities in excess of the prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

10. Regulations Governing Shipment of Radioactive Materials. The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

11. Records and Reports. The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

12. Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

Prior Evaluation of Uses of Radioactive Materials

13. Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups--those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities

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and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. this guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

15. Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum, experience in the use of radioisotopes or radiation.

Inspection

16. Purpose, Frequency. The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining, compliance with regulatory requirements.
Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

17. Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors.

18. Notification of Results of Inspection. Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Enforcement

19. Enforcement. Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

Personnel

20. Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments--their selection, use and calibration--laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State

regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training-radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

Special Nuclear Material, Source Material and Tritium

21. Conditions Applicable to Special Nuclear Material, Source Material and Tritium. Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.

22. Special Nuclear Material Defined. Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of

such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

Administration

23. State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

a. Formulation of rules of general applicability;
b. Approving or denying applications for licenses or authorization to possess and use radioactive materials, and
c. Taking disciplinary actions against licensees.

Arrangements For Discontinuing NRC Jurisdiction

24. State Agency Designation. The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. Existing NRC Licenses and Pending Applications. In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

26. Relations With Federal Government and Other States. There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

27. Coverage, Amendments, Reciprocity. An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:
a. Byproduct materials as defined in section 11e(1) of the Act,
b. Byproduct materials as defined in section 11e(2) of the Act,
c. Source materials,

d. Special nuclear materials in quantities not sufficient to form a critical mass,
e. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;
but must relate to the whole of such category or categories and not to a part of any category. [FN4] If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

FN4 A State which does not wish to continue regulation of uranium and thorium processors and byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act as amended, after November 8, 1981 pursuant to Pub. L. 95- 604 may obtain authority over all source material licenses within the State except for uranium or thorium processors.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 95-604 and the related provisions of the Atomic Energy Act.
Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensee.

28. NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;
b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;
c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and
d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981

Statutes

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements or Public Law 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA) as follows:

a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.

c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the reclamation or other bonded activity has been performed, funds for the purpose

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are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161X of the Atomic Energy Act.
d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.
e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.
f. A ban on major construction prior to completion of the aforementioned stipulations.
g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the U.S. in UMTRCA as stated in 10 CFR 150.15a and summarized by the following:

a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.
b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.
c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e.(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.
d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.
e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.
f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

31. It is preferable that State statutes contain the provisions of Section 6 of the Model Act, But the following may be accomplished by adoption of either procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.
In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written

analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:[FN5]

FN5 It is strongly recommended that a 30-day period be provided for public review.

a. An assessment of the radiological and nonradiological public health impacts;
b. An assessment of any impact on any body of water or groundwater;
c. Consideration of alternatives to the licensed activities; and
d. Consideration of long-term impacts of licensed activities (see Item 36b. (1).

Regulations

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent to the extent practicable or more stringent than regulations and standards adopted and enforced by the Commission, as required by Section 274o (see 10 CFR 40 and 10 CFR 150.31(b)).

Organizational Relationships Within the States

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.
a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between the agencies and/or regions and the Program Director should be clearly drawn.
b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment. Utilization of an applicant's environmental report in lieu of a lead agency assessment of the proposed project is not adequate or appropriate. However, the lead agency may prepare an environmental assessment based upon an applicant's environmental report. Other credible information may be utilized by the State as long as such information is verified and documented by the State.
c. When a lead agency is designated, that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.
In order to bring an environmental assessment to a satisfactory conclusion, it is highly recommended that an initial scoping document be developed which clearly delineates the area and scope of work to be performed by each agency within a given time constraint.
d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services. In those instances where non- governmental consultants are utilized, procedures should be established to avoid conflict of interest consistent with State law and administrative procedures.

Medical consultants recognized for their expertise in emergency medical matters, such as the Oak Ridge and Hanford National Laboratories, relating to the intake or uranium and its diagnosis thereof associated with uranium mining and milling should be identified and available to the State for advice and direct assistance.

During the budget preparation, the State should allow for funding costs incurred by the use of consultants. In addition, consultants should be available for any emergencies which

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may occur and for which their expertise would be needed immediately.

Personnel

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical; Administrative; and Support.

a. Administrative personnel are those persons who will provide internal guides, policy memoranda, reviews and managerial services necessary to assure completion of the licensing action. Support personnel are those persons who provide secretarial, clerical support, legal, and laboratory services. Technical personnel are those individuals who have the training and experience in radiation protection necessary to evaluate the engineering and radiological safety aspects of a uranium concentrator. Current indications are that 2 to 2.75 total professional person years' effort is needed to process a new conventional mill license, in situ license, or major renewal, to meet the requirements of UMTRCA. This number includes the effort for the environmental assessment and the in-plant safety review. It also includes the use of consultants. Heap leach applications may take less time and is expected to take 1.0 to 1.5 professional staff years' effort, depending on the circumstances encountered. Current indications are that the person years effort for support and legal services should be one secretary for approximately 2 conventional mills and 1/2 staff years for legal services for each noncontested mill case. The impact on environmental monitoring laboratory support services is difficult to estimate but should be added into the personnel requirements.

In addition, consideration should be given to various miscellaneous post- licensing ongoing activities including the issuance of minor amendments, inspections, and environmental surveillance. It is estimated that these activities may require about 0.5 to 1 person years effort per licensed facility per year, the latter being the case for a major facility. These figures do not include manpower for Title I activities of UMTRCA.

b. In evaluating license applications the State shall have access to necessary specialities, e.g., radiological safety, hydrology, geology and dam construction and operation.

In addition to the personnel qualifications listed in the "Guide for Evaluation of State Radiation Control Programs," Revision 3, February 1, 1980, the regulatory staff involved in the regulatory process (Radiation) should have additional training in Uranium Mill Health Physics and Environmental Assessments.

c. Personnel in agencies other than the lead agency are included in these total person year numbers. If other agencies are counted in these numbers then it shall be demonstrated that these personnel will be available on a routine and continuing basis to a degree claimed as necessary to successfully comply with the requirements of UMTRCA and these criteria. The arrangements for making such resources available shall be documented, such as an interagency memorandum of understanding and confirmed by budgetary cost centers.

Functions To Be Covered

35. The States should develop procedures for licensing, inspection, and preparation of environmental assessments.

a. Licensing

(1) Licensing evaluations or assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations. Items which should be evaluated are:

(a) Proposed activities;
(b) Scope of proposed action;
(c) Specific activities to be conducted;
(d) Administrative procedures;
(e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;
(f) Licensee audits and inspections;
(g) Radiation safety training programs for workers;
(h) Radiation safety program, control and monitoring;
(i) Restricted area markings and access control;
(j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;
(k) Environmental monitoring;
(l) Emergency procedures, radiological;
(m) Product transportation; and
(n) Site and physical decommissioning procedures, other than tailings.
(o) Employee exposure data and bioassay programs.

b. Environmental Assessment

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

(a) Topography;
(b) Geology;
(c) Hydrology and water quality;
(d) Meteorology;
(e) Background radiation;
(f) Tailings retention system;
(g) Interim stabilization, reclamation, and Site Decommissioning Program;
(h) Radiological Dose Assessment;
(1) Source terms
(2) Exposure pathway
(3) Dose commitment to individuals
(4) Dose commitment to populations
(5) Evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values
(6) Occupational dose
(7) Radiological impact to biota other than man
(8) Radiological monitoring programs, pre-occupational and operational
(i) Impacts to surface and groundwater, both quality and quantity;
(j) Environmental effects of accidents; and
(k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:
(a) Ecology;
(b) Environmental effects of site preparation and facility construction on environment and biota;
(c) Environmental effects of use and discharge of chemicals and fuels; and
(d) Economic and social effects.
c. Inspections
(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in- plant safety review. The principal items recommended for inspection are:
(a) Administration;
(b) Mill circuit, including any additions, deletions, or circuit changes;
(c) Accidents/Incidents;
(d) Part 19 or equivalent requirements of the State;
(e) Action taken on previous findings;
(f) A mill tour to determine compliance with regulations, and license conditions;
(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);
(h) Records;
(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.
(j) Effluent and environmental monitoring;
(k) Training programs;
(l) Transportation and shipping;
(m) Internal review and audit by management;

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(n) Exit interview; and
(o) Final written report documenting the results of the inspection and findings on each item.
(2) In addition, the inspector should perform the following:
(a) Independent surveys and sampling.
(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A complete inspection should be performed at least once per year.
d. Operational Data Review
(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.
(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.
a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily; U-238, Ra-226, Th-320, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner. Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

Dated at Washington, D.C. this 16th day of January, 1981.
For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 81-2428 Filed 1-22-81; 8:45 am]
BILLING CODE 7590-01-M

[Federal Register: July 16, 1981 (Volume 46, Number 136)]
[Notices]
[Page 36969]

NUCLEAR REGULATORY COMMISSION

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of Criterion 29f.

SUMMARY: In a Federal Register document published on January 23, 1981 (46 FR 7540-7546, FR Doc. 81-2428), the NRC published Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement. As published at 46 FR 7544, Col. 1, Criterion 29f. which states "ban on major construction prior to completion of the aforementioned stipulations," is inaccurate. This document corrects the text of Criterion 29 by revising paragraph f. to read as follows:

"f. A ban on major construction prior to completion of the written environmental analysis stipulated in Criterion 31."

FOR FURTHER INFORMATION CONTACT:

John F. Kendig, Office of State Programs, Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 492-9891.

Dated at Washington, D.C. this 10th day of July 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-20861 Filed 7-15-81; 8:45 am]
BILLING CODE 7590-01-M

[Federal Register: July 21, 1983 (Volume 48, Number 141)]
[Notices]
[Page 33376-33377]

NUCLEAR REGULATORY COMMISSION

Discontinuance of NRC Authority and Assumption Thereof by States Through Agreement; Criteria for Guidance of States and NRC

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of policy: Revision.

SUMMARY: Criterion 9 of the NRC's Policy for Discontinuance of Authority dated January 23, 1981 appearing at 46 FR 7540-7546, deals with waste disposal. It states that the standards for disposal into air, water and sewer, and burial in soil shall be in accordance with 10 CFR Part 20. The Commission's regulation 10 CFR Part 61, which became effective December 27, 1982, provides licensing procedures, performance objectives, technical requirements and financial assurance requirements for the issuance of licenses by NRC for the land disposal of most wastes that are commonly referred to as low-level waste. In addition, the Nuclear Waste Policy Act of 1982 requires that the NRC and the Agreement States provide and approve certain stated financial arrangements prior to issuance of a license for low-level radioactive waste disposal or in the case of licenses in effect, prior to termination of such licenses. The financial arrangements are to cover completion of all requirements for the decontamination, decommissioning, site closure and reclamation of sites, structures and equipment used in conjunction with low-level waste disposal.

The Commission believes that States seeking an agreement pursuant to Section 274b of the Atomic Energy Act of 1954, as amended, to regulate land disposal of radioactive waste should establish standards for disposal which are in accord with the applicable technical definitions, performance objectives, technical requirements, and financial assurance requirements of 10 CFR Part 61 and the waste transfer and manifest system prescribed in 10 CFR Part 20. For the waste manifest system to function effectively on a national basis, it is necessary for all licensees, both NRC and Agreement State, to follow the same system. Thus, the Agreement States are expected to adopt and implement this system for their licensees.

Therefore, the NRC is revising Criterion 9 to include reference to the performance objectives, technical requirements and financial assurance requirements contained in Part 61 and the waste transfer and manifest system

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contained in Part 20. The revision also satisfies the provisions of the Nuclear Waste Policy Act of 1982. Criterion 9 will be used in judging the adequacy and compatibility of that aspect of a State's regulatory program for regulating land disposal of low-level radioactive waste. No additional revisions to the criteria are considered necessary at this time to enter into an agreement with a State which includes authority to regulate low-level radioactive waste disposal.

For Agreement States currently regulating operating burial sites, NRC has been and will continue to work with the States to implement Part 61 provisions on a case-by-case basis, to the extent practicable. The waste transfer and manifest system, 10 CFR 20.311 becomes effective December 27, 1983. On an interim basis, arrangements are being made with the Agreement States regulating the existing burial sites to implement the waste classification system and waste transfer and manifest system through the burial site licensees.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-9893.

SUPPLEMENTARY INFORMATION: Criterion 9 is revised to read as follows:
* * * * *

9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97-425).

Commissioner Roberts, in disapproving, stated "Given the states' and the public's interest in all aspects of our waste disposal regulations and guidance, this revision should go out for public comments."

Dated at Washington, D.C. this 14th day of July, 1983.
For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-19710 Filed 7-20-83; 8:45 am]
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[Federal Register: September 3, 1997 (Volume 62, Number 170)]
[Notices]
[Page 46517-46525]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr03se97-107]

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NUCLEAR REGULATORY COMMISSION

Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statements.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing two final policy statements: the ``Statement of Principles and Policy for the Agreement State Program,'' and ``Policy Statement on Adequacy and Compatibility of Agreement State Programs.''

EFFECTIVE DATE: September 3, 1997.

ADDRESSES: Documents referenced in this notice are available for inspection in the Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, between 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia Maupin, Sr. Project Manager, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-2312.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statement of Principles and Policy for the Agreement State Program

On August 25, 1993, the Commission requested the NRC staff to recommend improvements to the NRC's Agreement State Program to assure adequate protection of public health and safety. The draft Policy Statement was published in the Federal Register on August 5, 1994 (59 FR 40058). At the Commission's request, the public comment period scheduled to end on October 4, 1994, was extended to December 19, 1994 (59 FR 52316).

A final Policy Statement was prepared based on the public comments, other activities and issues before the Commission, e.g., the ``Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' issues discussed at public briefings of the Commission by the Organization of Agreement States (OAS), and the Commission's deliberations on the Integrated Materials Performance Evaluation Program. On May 5, 1995, the NRC staff submitted to the Commission the ``Final Statement of Principles and Policy for the Agreement State Program'' and ``Procedures for Suspension and Termination of an Agreement State Program'' (SECY 95-115) that contained the full analysis of

ATTACHMENT 2

comments. By Staff Requirements Memorandum dated June 29, 1995, the Commission provided comments on the Statement of Principles and Policy for the Agreement State Program and directed staff to develop procedures for placing an Agreement State in probationary status and for implementing the phase-in of a new Agreement State program.

On October 3, 1996, the NRC staff submitted to the Commission the Statement of Principles and Policy for the Agreement State Program that had been modified as directed by the Commission (SECY 96-213). Further revisions were made to ensure consistency with the revised Policy Statement on Adequacy and Compatibility of Agreement State Programs. The procedures for suspension, emergency suspension and termination of agreements were finalized on April 25, 1996, and the procedure for placing an Agreement State in probationary status was finalized on July 3, 1996.

B. Statement on Adequacy and Compatibility of Agreement State Programs.

On July 21, 1994 (59 FR 37269), the Commission published in the Federal Register, for public comment, a draft Policy Statement regarding the adequacy of Agreement State programs to protect public health and safety and compatibility with NRC regulatory programs. The comment period for the draft Policy Statement was scheduled to expire on October 19, 1994, but was extended to December 19, 1994 (59 FR 52317). In addition, a public workshop was held on November 15, 1994 (59 FR 52321) to provide an opportunity for Agreement States and interested members of the public to provide comments on the draft Policy Statement.

A final ``Policy Statement on Adequacy and Compatibility of Agreement State Program'' was prepared based on the public comments and other activities and issues before the Commission. On May 3, 1995, the NRC staff submitted to the Commission the ``Final Policy Statement on Adequacy and Compatibility of Agreement State Programs'' (SECY 95-112) that contained the full analysis of comments.

C. Status of the Policy Statements

The Commission approved both policy statements in principle with a Staff Requirements Memorandum dated June 29, 1995, but deferred their implementation until all implementing procedures were completed and approved by the Commission. On August 2, 1995 (60 FR 39463), the Commission published in the Federal Register the status of these two policy statements and a notice of their availability.

NRC staff also prepared draft implementing procedures for phased implementation of a new Agreement State program that contained language for a standard agreement (Management Directive 5.8 and its associated handbook). Comments on the draft implementing procedures for phased implementation of new agreements and the standard agreement were requested from the Agreement States on November 15, 1996. The complete analysis of these comments is included in ``Final Recommendations on Policy Statements 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'' (SECY 97-054, dated March 3, 1997) that is available for inspection at the NRC Public Document Room. A summary of the comments appears with the text of the final policy statement in this notice.

In October 1995, a Working Group consisting of representatives of Agreement States and the NRC was formed to develop implementing procedures for the ``Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' The formation of this Working Group was announced in the Federal Register on December 1, 1995 (60 FR 61716). A notice announcing availability of the initial Working Group report

(August 21, 1996) and implementing procedures was published in the Federal Register on September 19, 1996 (61 FR 49357). Comments also were requested specifically from Agreement States and panelists who participated in the November 15, 1994, public workshop. The analysis of State and public comments is part of the supplemental report of the Working Group dated January 27, 1997, that is available for inspection at the NRC Public Document Room. A summary of the comments appears with the text of the final policy statement in this notice.

II. Statement of Principles and Policy for the Agreement State Program

A. Comment Summary

Comment letters were received from twelve Agreement States on the implementing procedures for phased agreements (Management Directive 5.8). There was strong opposition from the Agreement States on the inclusion of mandatory phased agreements for states seeking Agreement State status. Staff analyzed the comments and agreed with the concerns associated with the use of phased agreements. Changes were made to the Policy Statement to remove the phased agreement concept and to include revisions offered by the Agreement States, as appropriate. The Policy Statement was also edited to conform it to the position that Agreement States have flexibility to impose legally binding requirements on its licensees through mechanisms other than rules.

The text of the final policy statement follows.

B. The Commission Policy

Statement of Principles and Policy for the Agreement State Program

1. Purpose: The purpose of this Statement of Principles and Policy for the Agreement State Program is to clearly describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, and research uses of nuclear materials.

This Policy Statement addresses the Federal-State interaction under the Atomic Energy Act to: (1) Establish and maintain agreements with States under Section 274(b) that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the use of byproduct, source, and small quantities of special nuclear material; and (2) ensure that post-agreement interactions among the NRC and Agreement State radiation control programs are coordinated and compatible and that Agreement State programs continue to provide adequate protection of public health and safety.

This Policy Statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and that should be achieved in the administration of these programs.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding

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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. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

2. Statement of Legislative Intent: The Atomic Energy Act of 1954 did not 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 seeing that the boundaries of Federal and State authority were clearly defined. 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 byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had been borne for many years by the States.

Consequently, in 1959 Congress enacted Section 274 of the Atomic Energy Act to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to discontinue its regulatory authority over the use of these materials and for assumption of this authority by the States. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, and the export and import of nuclear materials.

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 Commission to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the Commission 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 of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

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

C. Principles of Program Implementation

1. Good Regulation Principles

In 1991, the Commission adopted ``Principles of Good Regulation'' to serve as a guide to both agency decision making and to individual behavior as NRC employees. Adherence to these principles has helped to ensure that NRC's regulatory activities have been of the highest quality, 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 Commission believes that NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The Commission further believes that such principles may be useful as a part of a common culture that NRC and the Agreement States share as co-regulators. Accordingly, the Commission encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program.

Regulatory decisions and actions should be developed and implemented in an open and publicly credible manner and should be able to withstand scrutiny. Such scrutiny should be welcomed by the regulator. The regulator should be independent and impartial in its actions, and this should be clearly evident. Regulations and regulatory decisions should be based on assessments of the best available information from affected and interested individuals and organizations, as well as on the best available knowledge from research and operational experience. Significant decisions, for example, a change in enforcement policy, should be documented explaining the rationale for such decisions. The public should have an opportunity for early involvement in significant regulatory program decisions. Where several effective alternatives are available, the alternative that best assures safety while considering differing views should be adopted, considering the resources needed to implement that alternative. Regulations should be necessary, and appropriate, to assure safety, and should be clear, coherent, logical, and practical. Regulatory actions should be fully consistent with regulations or other legally binding requirements and good public policy and should lead to stability and predictability in the planning and implementation of radiation control programs.

Failure to adhere to these principles of good regulation in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. All involved should welcome expressions of concern that indicate a program may not be operating in accordance with these principles and revise their program to more completely reflect these principles.

It is not intended that these principles of good regulation be established as formal criteria against which NRC and Agreement State programs would be assessed. Rather, the expectation is that these principles will be incorporated into the day-to-day operational fabric of NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of NRC and Agreement State materials program managers and staff in the self assessment of their respective programs and to use in the establishment of goals and objectives for the continual improvement of their respective

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programs. Deficiencies identified during the conduct of NRC Region and Agreement State formal program performance reviews may indicate that the program is not adhering to these principles of good regulation. The organization being assessed should factor the need for these principles into its actions to address identified deficiencies.

2. Coherent Nationwide Effort

The mission of the NRC is to assure that civilian use of nuclear materials in the United States is carried out with adequate protection of public health and safety. NRC acknowledges its responsibility, shared with the Agreement States, to ensure that the regulatory

programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of AEA materials. The basic elements of such regulatory programs include ability to ensure adequate protection of public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, ability to assess program performance on a consistent and systematic basis, and principles of good regulation in program administration.

Each of these elements is reflected and addressed in specific sections of this Policy Statement.

3. Adequate to Protect Public Health and Safety

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 controlling the uses of AEA materials. Accordingly, 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.

4. Compatible in Areas of National Interest

NRC and the Agreement States have the responsibility to ensure that consistent and compatible radiation control programs are administered. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should be not only effective and cooperatively implemented by NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services, and safety reviews for sealed source devices sold nationwide. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of NRC and each Agreement State to evaluate the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety.

5. Flexibility

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

D. New Agreements

Section 274 of the Atomic Energy Act requires that once a decision to seek 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, a narrative description of the State program's policies, practices and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary 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 Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

E. Program Assistance

NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into agreements and to help them prior to the assumption of regulatory authority. Following assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, NRC can provide training and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. NRC would also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC, the Agreement States are encouraged to do so. In addition, NRC and Agreement States will keep each other informed about relevant aspects of their programs. NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. 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.

If an Agreement State experiences difficulty in program administration, the Commission would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the State's ability to discharge its responsibility to continue to ensure adequate protection of public health and safety.

F. Performance Evaluation

Under Section 274 of the Atomic Energy Act of 1954, as amended, the

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Commission retains authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, NRC will provide oversight of Agreement State radiation control programs to ensure that they are adequate and compatible prior to entrance into a Section 274(b) agreement and that they continue to be adequate and compatible after an agreement is effective. The Commission, in cooperation with the Agreement States, will establish and implement a performance evaluation program to provide 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.

As a part of this performance evaluation process, the Commission will take any necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These

actions include: (1) Periodic assessments of Agreement State radiation control programs against established review criteria; (2) provision of assistance to help address weaknesses or areas within an Agreement State radiation control program requiring improvement, to the extent permitted by NRC resources; (3) placing a State on a probationary status for serious program deficiencies that require heightened oversight; (4) temporary suspension of an agreement and reassertion of NRC regulatory authority in an emergency if an Agreement State program experiences any immediate program difficulties preventing the State from continuing to ensure adequate protection of public health and safety; and (5) suspension or termination of an agreement and reassertion of NRC regulatory authority if the Agreement State program experiences difficulties that jeopardize the State's ability to continue to ensure adequate protection of public health and safety or to continue to maintain a compatible program. The basis for NRC's actions will be based on a well defined and predictable process and a performance evaluation program that will be consistently and fairly applied.

G. Levels of Agreement State Program Review Findings

The following discussion outlines the nature of NRC findings regarding the NRC's Agreement State review process.

Finding 1--Adequate To Protect Public Health and Safety and (or not) Compatible

If the NRC finds that a State program has met all of the Agreement State program review criteria or that only minor deficiencies exist, the Commission would find that the State's program is adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.

Finding 2--Adequate, but Needs Improvement and (or not) Compatible

If the NRC finds that a State program protects public health and safety, but is deficient in meeting some of the review criteria, the NRC may find that the State's program is adequate, but needs improvement. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, NRC may also find that the program is adequate but in need of improvement. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.

Finding 3--Inadequate to Protect Public Health and Safety and (or not) Compatible

If the NRC finds that a State program is significantly deficient in some or all of the review criteria, the NRC would find that the State's program is not adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the

program would be found not compatible.

H. NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above findings. The appropriate action will be determined on a case-by-case basis by NRC management.

Letters

In all cases, subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management. In the event that the NRC finds that a State program is adequate and compatible, no further action would be required, except a response by the State to any suggestions or recommendations. In the case where minor deficiencies are noted or areas for improvement are identified, the State would be requested to describe their proposed corrective action. If the corrective action appears appropriate, no further NRC action is required. If additional clarification of the corrective actions is needed, additional correspondence may be necessary.

Follow-up Reviews

In the event that deficiencies are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting program deficiencies. If, during follow-up reviews, it is shown that the State has taken corrective actions, a letter finding the State adequate and compatible would be provided.

Probationary Status

There are three circumstances that can lead to an adequate but needs improvement or incompatible State program being placed in a probationary status: (1) There are cases in which program deficiencies may be serious enough to require immediate heightened oversight; (2) in other cases, Agreement State program deficiencies previously identified may have been uncorrected for a significant period of time; and (3) if the NRC determines that a State program has been late in adopting required compatibility program elements and significant disruption in the collective nationwide efforts to

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regulate AEA materials has occurred. If the NRC was not confident that the State would address the program deficiencies in an expeditious and effective manner, the Commission would place the State program on probation.

As a result of placing a State program on probation, the NRC would communicate its findings to a higher level of State management. Notice of such probationary status would normally be addressed to the Governor of the State. Notice would also be published in the Federal Register. A copy of the letter to the Governor would be placed in the Public Document Room and a press release would be issued.

Once a State program is placed on probation, the NRC would heighten its oversight of the program. This would include obtaining commitments from the State in the form of a management plan to describe actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The NRC would increase observation of State program activities under the agreement to assure adequate protection of public health and safety. If requested and in accordance with terms agreed to by the parties, the NRC would consider providing technical support for the maintenance of the regulatory program. The probationary period would last for a specified period of time. This period would not normally be more than one year, but could be extended based on extenuating circumstances. At the end of that time, if the State has not addressed the deficiencies, the NRC would institute

suspension or termination proceedings.

Suspension

Section 274j of the Atomic Energy Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action to protect public health and safety, or if the program has not complied with one or more of the requirements of Section 274 of the Act, the Commission would suspend all or part of its agreement with the State. In cases where a State has failed to respond in an acceptable manner during the probationary period, suspension would be considered. If the situation is not resolved, termination will be considered.

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the Federal Register. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j(2) of the Act also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take necessary action within a reasonable time.

Termination

Section 274j of the Atomic Energy Act gives the Commission authority to terminate its agreement with a State if such termination is required to protect public health and safety, or if the State program has not complied with one or more of the requirements of Section 274 of the Act (e.g., is found to be not compatible with the Commission's program). When the Commission finds such significant program deficiencies, the Commission would institute proceedings to terminate its agreement with the State.

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination.

Also, notice of the proposed termination will be published in the Federal Register. There may be cases where termination will be considered even though the State program has not been placed on probation.

I. Program Funding

Currently, Section 274 does not allow federal funding for the administration of Agreement State radiation control programs. Section 274 permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with NRC, however, it is NRC policy not to fund the establishment of new Agreement State programs. Regarding training, given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC offers certain relevant training courses and notifies Agreement State personnel of their availability.

J. Regulatory Development

NRC and Agreement States will cooperate in the development of new

regulations and policy. Agreement States will have early and substantive involvement in the development of new regulations affecting protection of public health and safety and of new policy affecting administration of the Agreement State program. Likewise, the NRC expects to have the States provide it with early and substantive involvement in the development of new Suggested State Regulations. NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations 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.

K. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of AEA materials to identify specific changes that should be considered based on experience or to further improve overall performance and effectiveness. The changes considered may include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

III. Policy Statement on Adequacy and Compatibility of Agreement State Programs

A. Comment Summary

Ten comment letters were received, one from the Organization of Agreement States, six Agreement State program directors, two industry organizations and one environmental group. The Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs analyzed the comments and changes were made to the Policy Statement (1) to add additional clarifying language for the terms ``adequacy'' and ``compatibility'' and the cooperative nature of the NRC--Agreement State relationship; (2) to

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conform it to the position that Agreement States have flexibility with respect to the legally binding mechanism by which regulatory requirements needed for adequacy or compatibility are adopted; and (3) to simplify the language describing compatibility categories. Changes also were made in response to the June 30, 1997 Staff Requirements Memorandum. These changes (1) reflect that program elements for compatibility also impact public health and safety and may also be considered program elements for adequacy; (2) clarify the definition of basic radiation protection standard; and (3) clarify that States may not adopt program elements reserved exclusively to NRC. The implementing procedures were changed to reflect the final Policy Statement.

One Agreement State specifically commented that it did not believe that Section 274 of the AEA required compatibility of programs or program elements after an agreement is effective except for requirements pertaining to the Uranium Mill Tailings Radiation Control Act in section 274(o). This position also was reflected in the recommended changes to the Policy Statement submitted by the Organization of Agreement States.

The Commission does not agree with this interpretation of the AEA. Both Sections 274d.(2) and 274g. indicate that the Commission must find a State program to be compatible with that of NRC in order to enter into a Section 274b. agreement with the State. It is the Commission's

view that, pursuant to Section 274, an Agreement State's program should be compatible with NRC's program for the duration of the Agreement for the following reasons:

Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of radiation protection standards ``to assure that the State and Commission programs for the protection against hazards of radiation will be coordinated and compatible.'' This provision demonstrates Congress' intention that the compatibility between the NRC and Agreement State programs should be maintained on a continuing basis.

Section 274j.(1) calls on the Commission to suspend or terminate an Agreement State's program if ``the State has not complied with one or more of the requirements'' of the Section 274. The Commission believes that this phrase ``one or more of the requirements,'' encompasses all requirements of Section 274, including the requirement for compatibility.

Under subsection 274d.(2), the Commission is authorized to enter into an agreement with a State if the Commission makes both requisite findings that the State program is compatible with the NRC's program and adequate to protect public health and safety. Absent a continuing compatibility requirement, an Agreement State could divert from having a compatible program the day after any agreement is signed with NRC. This would render the Commission's initial compatibility finding required by Section 274d.(2) meaningless.

Therefore, the Commission does not believe that Congress intended such meaning for the compatibility requirement and no changes were made to the Policy Statement in response to this comment.

The text of the final policy statement follows.

B. The Commission Policy

Policy Statement on Adequacy and Compatibility of Agreement State Programs

Purpose: Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC, by agreement with a State, relinquishes its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to periodically review State programs to ensure compliance with provisions of Section 274. This Policy Statement presents the Nuclear Regulatory Commission's policy for determining the adequacy and compatibility of Agreement State programs established pursuant to Section 274. This Policy Statement clarifies the meaning and use of the terms ``adequate to protect public health and safety'' and ``compatible with the Commission's regulatory program'' as applied to the Agreement State program. The Policy Statement also describes the general framework that will be used to identify those program elements \1\ that Agreement State programs should implement to be adequate to protect public health and safety and to be compatible with the Commission's regulatory program. Finally, the Policy Statement reflects principles discussed in the Commission's Statement of Principles and Policy for the Agreement State Program which should be considered in conjunction with this Policy Statement.

\1\ For the purposes of this Policy Statement, ``program element'' means any component or function of a radiation control regulatory program, including regulations and/or other legally binding requirements imposed on regulated persons, that contributes

to implementation of that program.

This Policy Statement is solely guidance for the Commission and the Agreement States in the implementation of the Agreement State program. 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 Atomic Energy Act and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

Background: The terms ``adequate'' and ``compatible'' represent fundamental concepts in the Agreement State program authorized in 1959 by Section 274 of the Atomic Energy Act of 1954, as amended (AEA). Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a State, provided that the State's program is adequate to protect public health and safety and compatible, in all other respects, with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with States in the formulation of standards to assure that State and Commission standards will be coordinated and compatible. Subsection 274j.(1) requires the Commission to review periodically the Agreements and actions taken by States under the Agreements to ensure compliance with provisions of Section 274. In other words, the Commission must review the actions taken by States under the Agreements to ensure that the programs continue to be adequate to protect public health and safety and compatible with the Commission's program.

Section 274 of the AEA requires that Agreement State programs be both ``adequate to protect the public health and safety'' and ``compatible with the Commission's program.'' These separate findings are based on consideration of two different objectives. First, an Agreement State program should provide for an acceptable level of protection of public health and safety in an Agreement State (the ``adequacy'' component). Second, the Agreement State should ensure that its program serves an overall nationwide interest in radiation protection (the ``compatibility'' component). As discussed in more detail below, an ``adequate'' program should consist of those program elements necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. A ``compatible'' program should consist of those program elements necessary to

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meet a larger nationwide interest in radiation protection generally limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications. Program elements for adequacy focus on the protection of public health and safety within a particular State, whereas 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. Many 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 Commission will seek the advice of the Agreement States and will consider such advice in its final decision.

Adequacy: 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 source, byproduct, and small

quantities of special nuclear material (hereinafter termed ``agreement material'') as identified by Section 274b. of the AEA. The level of protection afforded by the program elements of NRC's materials regulatory program is presumed to be that which is adequate to provide a reasonable assurance of protection of public health and safety. 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 five essential program elements, identified below, that the Commission will use to define the scope of its review of the program. The Commission also will consider, when appropriate, other program elements of an Agreement State which appear to affect the program's ability to provide reasonable assurance of public health and safety protection. Such consideration will occur only if concerns arise.

A. Legislation and Legal Authority

State statutes should:

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 Commission;

Authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety;

Authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and

Be otherwise consistent with Federal statutes, as appropriate, such as Pub. L. 95-604, The Uranium Mill Tailings Radiation Control Act (UMTRCA).

In addition, the State should have existing legally enforceable measures such as generally applicable rules, 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 a limited number of legally binding requirements based on those of NRC because of their particular health and safety significance. In adopting such requirements, Agreement States should adopt the essential objectives of those of the Commission.

B. Licensing

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

C. Inspection and Enforcement

The State 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.

D. Personnel

The State should be staffed with a sufficient number of qualified

personnel to implement its regulatory program for the control of agreement material.

E. Response to Events and Allegations

The State 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.

Compatibility

An Agreement State radiation control program is compatible with the Commission's regulatory program when its program does not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. For purposes of compatibility, the State should address categories A, B, and C identified below:

A. Basic Radiation Protection Standards

For purposes of this Policy Statement, this category includes ``basic radiation protection standards'' meaning dose limits, concentration and release limits related to radiation protection in 10 CFR part 20 that are generally applicable, and the dose limits in 10 CFR 61.41.² 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 Commission, 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.

\2\ The Commission will implement this category consistent with its earlier decision in the LLW area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, ALARA 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 at least equivalent to that afforded by Commission requirements.

B. Program Elements with Significant Transboundary Implications

The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications. Agreement State program elements should be essentially identical to those of the Commission.

C. Other Commission Program Elements

These are other Commission program elements (e.g., reciprocity procedures) that are important for an Agreement State to have 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 Commission program elements.

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D. Program Elements not Required for Compatibility

An Agreement State has the flexibility to adopt and implement program elements based on those of the Commission (other than those identified in A, B, and C above) or other program elements within the State's jurisdiction that are not addressed by NRC.

All program elements of an Agreement State relating to agreement material should:

Be compatible with those of the Commission (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);

Not preclude, or effectively preclude, a practice \3\ in the national interest without an adequate public health and safety or environmental basis related to radiation protection; or

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\3\ ``Practice'' means a use, procedure, or activity associated with the application, possession, use, storage, or disposal of agreement material. The term ``practice'' is used in a broad and encompassing manner in this Policy Statement. The term encompasses both general activities involving use of radioactive materials such as industrial and medical uses and specific activities within a practice such as industrial radiography and brachytherapy.

Not preclude, or 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.

E. Areas of Exclusive NRC Regulatory Authority

These are program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the Code of Federal Regulations. However, an Agreement State may inform its licensees of certain of these NRC provisions 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 pursuant to them.

Summary and Conclusions

To foster and enhance a coherent and consistent nationwide program for the regulation of agreement material, the Commission encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the Commission. However, the fact that an Agreement State's program is compatible with that of the Commission does not affect that State's obligation to maintain an adequate program as described in this Policy Statement.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement the Commission will provide Agreement States a broad range of flexibility in the administration of individual programs. In doing so, the Commission allows Agreement States to fashion their programs so as to reflect specific State needs and preferences, recognizing the fact that Agreement States have responsibilities for radiation sources in addition to agreement material.

The Commission 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 will allow the

Commission to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The Commission believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for coordinated and compatible regulation of agreement material across the country.
* * * * *

Paperwork Reduction Act Statement

These final policy statements do not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0183.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Dated at Rockville, Md., this 27th day of August, 1997.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.
[FR Doc. 97-23330 Filed 9-2-97; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

Evaluation of Agreement State Radiation Control Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim implementation of the Integrated Materials Performance Evaluation Program pending final Commission approval of the Statement of Principles and Policy for the Agreement State Program and the Policy Statement on Adequacy and Compatibility of Agreement State Programs.

SUMMARY: The Nuclear Regulatory Commission (NRC) is implementing, on an interim basis, the Integrated Materials Performance Evaluation Program (IMPEP) to be used in the evaluation of Agreement State Programs. To effect this implementation, the NRC will suspend relevant portions of the May 28, 1992 General Statement of Policy ``Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992.'' Management Directive 5.6, Integrated Materials Performance Evaluation Program, will be used as the implementing procedure.

The NRC will implement IMPEP in the evaluation of Agreement State Programs until such time as final implementing procedures for the policy statements: ``Statement of Principles and Policy for the Agreement State Program'' and ``Policy Statement on the Adequacy and Compatibility of Agreement State Programs,'' and any revisions to these policy statements are approved by the Commission (See 60 FR 39464; August 2, 1995). Conforming revisions to IMPEP in connection with the completion of work on these two policy statements will be done as appropriate. IMPEP will then be implemented on a permanent basis and the 1992 policy statement on ``Guidelines for NRC review of

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Agreement State Radiation Control Programs'' will be rescinded.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Interested persons may obtain a single copy of Management Directive 5.6 by writing Mr. George Deegan, U.S. Nuclear Regulatory Commission, Mail Stop T8-F5, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1-37, Washington, DC 20555, telephone (301)-415-2320.

SUPPLEMENTARY INFORMATION: In 1994, NRC proposed a process to evaluate NRC Regional programs and Agreement State Radiation Control Programs, that regulate the use of radioactive materials, in an integrated manner using common performance indicators. The staff conducted a pilot program in 1994 with three Agreement States and two NRC Regional materials programs using the draft Management Directive 5.6, ``Integrated Materials Performance Evaluation Program'' (IMPEP). On June 27, 1995, the Commission approved implementation of IMPEP on an

ATTACHMENT 3

interim basis. The draft Management Directive is currently being prepared in final form.

Five common performance indicators, as described in Management Directive 5.6 will be used to determine adequacy of materials programs. Additionally, Compatibility of Regulations and Legal Authority (including enforcement) will be addressed as non-common indicators. Existing procedures for compatibility determinations (Office of State Programs B.7 Procedure) will continue to be utilized in connection with NRC findings on Compatibility of Regulations under IMPEP until the final implementing procedures for the policy statements: ``Statement of Principles and Policy for the Agreement State Program'' and ``Policy Statement on the Adequacy and Compatibility of Agreement State Programs,'' and any revisions to these policy statements are approved by the Commission. The interim implementation of IMPEP will require the partial suspension of the May 28, 1992 General Statement of Policy ``Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992'' (57 FR 22495). The NRC will only continue to apply the single program element of the 1992 General Statement of Policy entitled ``Legislation and Regulations.'' NRC will rescind the entire 1992 General Statement of Policy upon final approval and implementation of the ``Statement of Principles and Policy for the Agreement State Program'' and ``Policy Statement on the Adequacy and Compatibility of Agreement State Programs.''

Low-level waste, uranium mill or sealed source and device programs in Agreement States will not be reviewed as common performance indicators since NRC Headquarters conducts these NRC licensing activities. A performance-based evaluation approach, similar to that developed for the common performance indicators, will be utilized in reviews of NRC and Agreement State programs in these areas.

The NRC will review the performance of each Agreement State on a periodic basis. Each Agreement State evaluation will be coordinated with the States. For those Agreement States with program findings that are both adequate and compatible, the staff will consider extending the current review cycle of 2 years to 3-4 years.

Dated at Rockville Maryland this 19th day of October, 1995.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.
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[DOCID:fr16oc97-126]

NUCLEAR REGULATORY COMMISSION

Evaluation of Agreement State Radiation Control Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Implementation of the Integrated Materials Performance Evaluation Program and rescission of a final general statement of policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is implementing the Integrated Materials Performance Evaluation Program (IMPEP) for the evaluation of Agreement State programs. NRC is rescinding the May 28, 1992, General Statement of Policy ``Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992,'' since it is now superseded.

The NRC has issued the final policy statements: ``Statement of Principles and Policy for the Agreement State Program'' and ``Policy Statement on the Adequacy and Compatibility of Agreement State Programs,'' (See 62 FR 46517; September 3, 1997). Conforming revisions to IMPEP in connection with these two policy statements have been completed and are reflected in the implementing procedure, Management Directive 5.6, Integrated Materials Performance Evaluation Program.

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EFFECTIVE DATE: October 1, 1997.

ADDRESSES: Interested persons may obtain a single copy of Management Directive 5.6 by contacting Nancy Belmore, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1-37, Washington, DC 20555, telephone (301)-415-2326.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1-37, Washington, DC 20555, telephone (301)-415-2320.

SUPPLEMENTARY INFORMATION: In 1995, NRC implemented, on an interim basis, a process to evaluate NRC regional licensing and inspection programs and Agreement State radiation control programs that regulate the use of radioactive materials in an integrated manner using common performance indicators (see 60 FR 54734; October 25, 1995). The NRC staff conducted the interim program using Management Directive 5.6, ``Integrated Materials Performance Evaluation Program'' dated September 12, 1995. On June 30, 1997, the Commission approved SECY-97-054, Final Recommendations on Policy Statements and Implementing Procedures for: ``Statement of Principles and Policy for the Agreement State Program'' and ``Policy Statement on the Adequacy and Compatibility of Agreement State Programs.'' NRC is implementing IMPEP with the corresponding revisions as a result of the final policy statements. The revised

Management Directive is currently being prepared in final form to incorporate the final policy statements and comments received during interim implementation of IMPEP from the Regions and the Agreement States.

NRC is rescinding the May 28, 1992, ``NRC Review of Agreement State Radiation Control Programs: Final General Statement of Policy,'' on October 1, 1997. This policy is superseded by IMPEP, which is no longer considered an interim program.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT: In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that Management Directive 5.6 is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville Maryland this 7th day of October, 1997.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.
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