July 14, 2014

MEMORANDUM TO: Chairman Macfarlane
Commissioner Svinicki
Commissioner Magwood
Commissioner Ostendorff

FROM: Mark A. Satorius ***/RA/***
Executive Director for Operations

SUBJECT: AGREEMENT STATE PROGRAM POLICY STATEMENTS: UPDATE ON RECENT ACTIVITIES AND RECOMMENDATIONS FOR PATH FORWARD

The purpose of this memorandum is to seek Commission approval on a path forward that enables the staff to more efficiently respond to two Staff Requirements Memorandum (SRM) (one from 2010 and one from 2013) that both deal with Agreement State adequacy and compatibility. Staff plans to consolidate the policy statements associated with the SRM "SECY-10-0105, Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device" [Agencywide Documents Access and Management System (ADAMS) Accession No. ML103360262] dated December 2, 2010, into a single policy statement. The policy statement work will be done in concert with ongoing staff efforts to address SRM "SECY-12-0112, Policy Statements on Agreement State Programs (Revised)," (ADAMS Accession No. ML13148A352) dated May 28, 2013, to develop a performance-based approach for assessing compatibility of Agreement State radiation control programs, and to revise, replace, supplement, or expand the performance metrics under the Integrated Materials Performance Evaluation Program (IMPEP). Staff plans to provide one SECY paper that includes the single policy statement, and staff recommendations on performance–based compatibility and the IMPEP metrics in November 2014.

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Background:

The U.S. Nuclear Regulatory Commission (NRC) staff effort to update the policy statements began with the Commission's direction in SRM "SECY-10-0105, Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device" (ADAMS Accession No. ML103360262) dated December 2, 2010. That SRM directed the staff to update the Commission's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and associated guidance documents to include both safety and source security considerations in the determination process. The NRC staff concurrently revised the Commission's policy statement on the "Statement of Principles and Policy for the Agreement State Program." In accordance with NRC Management Directive 5.3, "Agreement State Participation in Working Groups" (ADAMS Accession No. ML070940610), two working groups, which included Agreement State members, proposed revisions to these two policy statements. The revisions added information on security of radioactive materials and incorporated changes made in the NRC's policies and procedures since the policy statements became effective in 1997.

The Commission approved publication of the proposed policy statement updates in SRM "SECY-12-0112, Policy Statements on Agreement State Programs (Revised)," dated May 28, 2013. In addition, the Commission directed the NRC staff to solicit comments on the Compatibility Category B designation described in the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." As a separate matter, the Commission directed the NRC staff to engage the Agreement States on whether to develop a recommendation for a performance-based approach for assessing compatibility of Agreement State radiation control programs, and whether the NRC staff should develop a recommendation to revise, replace, supplement, or expand the performance metrics used in the IMPEP. The Office of Federal and State Materials and Environmental Management Programs (FSME) published the proposed policy statements in the *Federal Register* on June 3, 2013 (78 FR 33122) for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118). To facilitate input, the NRC held two public meetings (July 18, 2013, and August 6, 2013) and a topical session during the OAS annual meeting in Reno, Nevada, on August 28, 2013.

Discussion:

Since 2009, the Commission and staff have identified a number of areas to improve and enhance the Agreement State Program. The tasks associated with these areas of improvement include: (1) 15 recommendations from an NRC/Agreement State self-assessment; (2) revision to the 2 Agreement State policy statements; (3) 4 recommendations from the systematic assessment of Agreement State program performance; (4) revision of the 6 Management Directives (MDs) and over 40 State Agreement (SA) procedures used to implement the Agreement State Program; (5) recommendation for performance-based compatibility; (6) recommendation for enhancing the IMPEP evaluation metrics; and (7) a table top exercise for the return of an Agreement State Program. The table below summarizes these tasks.

Date	Task	Outcome	Status
2009	Audit of NRC's Agreement State Program, OIG-09-A-08	5 Recommendations	Closed
2010	IMPEP Self-Assessment Working Group Report	15 Recommendations	In Progress • 5 recommendations closed • 10 recommendations pending update to MD 5.6 and implementing procedures
2010	SRM-SECY-10-0105 dated December 2, 2010	Staff directed to revise the Agreement State Policy Statements and associated guidance documents	In Progress • Draft policy statements published July 2013 • Public comments resolved • Closure pending final policy statement • Closure pending updates to MD 5.6, MD 5.9, MD 5.10 and implementing procedures
2012	Chairman's Tasking Memorandum dated February 17, 2012	Staff directed to assess Agreement State performance and identify practical solutions that could bolster Agreement State performance and capacity	In Progress • Systematic assessment completed 1/2013 • MRB held 4/2013 • Closure pending action on 4 recommendations
2012	SRM-SECY-12-0112 dated May 23, 2013	Staff directed to develop recommendations on a Performance-based approach for determining compatibility and a revised set of performance metrics for the IMPEP program	In progress • Public comment solicited • Closure pending staff's recommendations
2012	Tabletop exercise on the return of an Agreement State Program	The outcome of the tabletop exercise recommends improvements to existing implementing procedures	In progress • Plan completed January 2013 • Exercise held June 25, 2014 • Action items pending
2013	SRM from May 29, 2013, briefing on the Results of the Agency Action Review	Directed staff to consider vehicles for Commission discussion regarding the performance of Agreement State Programs	Closed

The NRC staff has commenced work on all of the tasks and concluded the deliverables for the tasks result in the need for updating the same group of MDs and implementing procedures. The separate tasks have overlapping and conflicting schedules resulting in inefficiencies in finalizing them. Thus, staff seeks to consolidate and realign these activities in order to more effectively accomplish them. In April 2014, staff reviewed the existing revisions to the two Agreement State policy statements and proposed to management to consolidate them into a single policy statement.

These two policy statements are related to the Agreement State Program. The Policy Statement on "Adequacy and Compatibility of Agreement State Programs" presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The "Statement of Principles and Policy for the Agreement State Program" describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement[1]. The policy statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance used by the NRC and Agreement States radiation control programs to meet their respective regulatory responsibilities. The application of these two policy statements has significant influence on the regulation of the more than 19,000 Agreement State materials licensees.

The working groups[2] identified redundant language between the two policy statements and concluded that one policy statement contains detailed information on IMPEP that is not typically included in a high level policy statement. The NRC staff intends to consolidate the two Agreement State Program policy statements into a single higher level policy statement by removing the IMPEP details and redundancies. The details about IMPEP are considered more appropriately covered in implementing procedures (e.g., MDs 5.6, 5.9 and implementing procedures). The NRC staff can develop a single policy statement while preserving nearly all the work already completed by the working groups to update the separate policies. Having one high level policy statement would allow the NRC staff to more efficiently implement programmatic changes to the Agreement State Program by revising the appropriate MDs and implementing procedures as opposed to revising the policy statements.

The NRC staff can further optimize resources by merging the staff effort associated with the recommendations to develop a performance-based approach for assessing compatibility of Agreement State radiation control programs, and to revise, replace, supplement, or expand the performance metrics used under the IMPEP. Staff plans to provide one SECY paper that includes the consolidated policy statement, and staff recommendations on performance–based compatibility and the IMPEP metrics.

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[1] Section 274 of the Atomic Energy Act (Act), as amended, provides a statutory basis under which the NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with section 274b. of the Act.

[2] Workgroups included members from Agreement States, NRC Headquarters and Regional offices.

Next Steps

The staff plans to merge the two revised policy statements into a single policy statement and provide the revised, single policy statement to the Agreement States for early comment this summer. In addition, staff will draft recommendations for developing performance–based compatibility and the IMPEP metrics and also engage the Agreement States this summer for comment on these topics. The revised single policy statement, the staff's proposal for a performance-based approach for assessing compatibility of Agreement State radiation control programs, and the staff's proposal to revise, replace, supplement, or expand the performance metrics under the IMPEP will then be provided to the Commission in a SECY paper in November 2014. In the November 2014 SECY paper, the NRC staff will recommend to the Commission that the revised, single policy statement be published for public comment due to its significant influence on the National Materials Program. Once the public comment period ends, staff would resubmit the policy statement to the Commission for final approval and at the same time, provide proposed changes to MD 5.6 and MD 5.9.

Recommendation:

The staff recommends that the Commission approve the staff's plan to provide a single SECY paper in November 2014 that includes: a consolidated, single policy statement for Agreement State programs; a recommendation for assessing compatibility of Agreement State radiation control programs; and a recommendation to revise, replace, supplement, or expand the IMPEP performance metrics.

Coordination:

The Office of the General Counsel has no legal objection to staff's plan to provide a SECY paper that includes the single policy statement, staff recommendations on performance–based compatibility, and the IMPEP metrics.

SECY, please track.

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Recommendation:

The staff recommends that the Commission approves staff's plan to provide a single SECY paper in November 2014 that includes: a consolidated, single policy statement for Agreement State programs; a recommendation for assessing compatibility of Agreement State radiation control programs; and a recommendation to revise, replace, supplement, or expand the IMPEP performance metrics.

Coordination:

The Office of the General Counsel has no legal objection to staff's plan to provide a SECY paper that includes the single policy statement, staff recommendations on performance–based compatibility, and the IMPEP metrics.

SECY, please track.

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