

**Comment Summary for RCPD-14-013: Consolidated Policy Statements
That Deal with Agreement State Adequacy and Compatibility**

ITEM	SECTION	COMMENT
1	General	Six commenters were not in favor of combining the two policy statements citing the following reasons: 1) the statements address unique topics (operational goals of a regulatory program vs review of an operation of a regulatory program); 2) the splitting up and redistribution of the sections of the two policy statements result in changes in the emphasis and relationship of both policy statements, both within each policy, and to each other; and 3) there are only five sentences that are common to both policy statements, which is not indicative of a great amount of redundancy.
2	General	Five commenters stated the use of the word "relinquish" is not accurate and recommended changing "relinquish" to "discontinue" throughout the document so the wording is consistent with the AEA 274b.
3	General	Three commenters suggested use of the term "physical protection" instead of "security" and deleting "secure handling" and leaving it as "safe handling" so as to not confuse the responsibilities of other state agencies.
4	General	Commenter stated that adequacy and compatibility are two very different concepts with different goals and objectives and, as such, should remain separate and not equal. Commenter believed NRC places adequacy at high significance.
5	General	Five commenters believed NRC management made the decision to combine the policy documents and develop the "Consolidated Policy Statement" unilaterally, without input from the Agreement State working group members who worked on the individual policies. One commenter stated an expectation for NRC to involve Agreement State working group members in all aspects of working group projects to ensure that documents adequately address issues of the Agreement States as well as the NRC. Four commenters believed that unilateral action by NRC damages trust and relationship between NRC and the Agreement States. Three of the five commenters cited NRC Management Directive 5.3 and noted that the combined policy was not cooperatively developed.
6	General	Commenter agreed that "public health and safety" includes physical protection and suggests listing this information early in the document to limit redundancies.
7	General	Commenter agreed with use of the term "physical protection" instead of "security".
8	General	Commenter requested an extension to submit comments.
9	General	Commenter believes document is too long and contains too much background detail. Commenter believes Policy Statement should be clear and concise and meet a well-defined objective(s).
10	General	Commenter believes that the policy does not define or sufficiently describe "compatible" as it applies to Agreement States and Section 274 of AEA.
11	General	Commenter stated the use of the word "relinquish" is inconsistent with the AEA, which uses "discontinue", and commenter suggested using "effectively relinquishes" instead.
12	General	Commenter suggested consistent use of the terms "AEA materials", "physical protection", and "security".

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13	General	Commenter noted difficulty in reviewing because NRC did not provide the original documents or a red-line/strikeout version of the draft document. Commenter had to obtain the background documents and do a comparison independently. Commenter recommended NRC provide red-line/strikeout or underlining and highlighting methods to allow for comparisons in the future.
14	General	Commenter does not oppose majority of consolidation of policy statements and believes the resulting document with suggested changes adequately encompasses the elements of both individual policy statements.
15	General	Commenter appreciated extended discussions with NRC on this topic.
16	General	Commenter recommended some renumbering/relettering and additional section titles for clarity and organization throughout the document.
17	General	Commenters recommended revising policy title as follows: "Policy Statement for Adequacy and Compatibility and for the Evaluation of the Agreement State Programs "
18	Section I. PURPOSE	Commenter suggested removing the phrase, "Nor does this Policy Statement diminish or constrain the NRC's authority under the AEA" because the information is obvious and redundant.
19	Section I. PURPOSE	Commenter recommended the following edits: "The purpose of this Policy Statement for the Agreement State Program is to present the U.S. Nuclear Regulatory Commission's (NRC) policy for determining adequacy and compatibility, clarify the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program, and describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States... "
20	Section I. PURPOSE	Commenter recommended the following edits: "Section 274 provides broad authority for a the NRC to establish a unique Federal- and State regulatory framework for the control of byproduct, source, and small quantities of special nuclear material and in the..."
21	Section I. PURPOSE	Commenter recommended the following edits: "Section 274b. of the AEA authorizes the NRC to enter into an agreement with a State by which the NRC relinquishes discontinues and the State assumes regulatory authority over some or all of these materials listed above. "
22	Section I. PURPOSE	Commenter recommended the following edits: "This Policy Statement is solely guidance for the Commission¹ and the Agreement States in the implementation of the Agreement State Program and addresses adequacy and compatibility along with the Federal-State... " ¹ For the purposes of this Policy Statement the definition of Commission is equivalent to Title 10 of the Code of Federal Regulations: Commission means the five members of the NRC or a quorum thereof sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, as amended.

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23	Section I. PURPOSE	Commenter recommended moving a paragraph from Background to the end of the Purpose section with additional edits: " This Policy Statement does not 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 and other relevant legal authority. Nor does this Policy Statement diminish or constrain the NRC's authority under the AEA. "
24	Section II. BACKGROUND	Commenter supported the addition of the phrase, "In identifying those program elements for adequate and compatible programs, or and changes thereto, the NRC staff will seek the advi[s]e of the Agreement States. The Commission will consider such advice in its final decision," and suggested the text be moved from the BACKGROUND to the end of the DISCUSSION section.
25	Section II. BACKGROUND	Commenter suggested the following edits: "In addition, nothing in this Policy Statement expands the legal authority of Agreement States or NRC beyond..."
26	Section II. BACKGROUND	Commenter requested emphasis throughout the document that the states have been and will be assuming much of the burden for efforts related to physical protection. Commenter indicated there should be clarity for external stakeholders (GAO, Congress, DHS) that states are significant players in this area.
27	Section II. BACKGROUND	Commenter stated that the concepts of "adequate" and "compatible" are not defined and are unclear.
28	Section II. BACKGROUND	Commenter recommended deleting the following: " Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274. "
29	Section II. BACKGROUND	Commenter strongly recommended the following edits: "This Policy Statement is intended solely as guidance- policy for the NRC..." and stated this policy was not guidance.
30	Section II. BACKGROUND	Commenter notes that while the draft policy states that "Subsection 274g authorizes and directs the NRC to cooperate...", Article V of the State agreement states that the Commission and State will use their best effort to cooperate
31	Section II. BACKGROUND	Commenter suggested the following edits: "Following the events of September 11, 2001, the NRC and Agreement States developed and implemented 's regulatory oversight has included developing and implementing enhanced security measures for higher risk sources. "
32	Section II. BACKGROUND	Commenter suggested deleting the first sentence of the fourth paragraph: " Section 274 further directs the NRC to periodically review State programs to ensure compliance with the provisions of Section 274. "
33	Section II. BACKGROUND	Commenter suggested moving this sentence to the beginning of Section I. PURPOSE; defining the terms "adequacy" and "compatibility"; and editing as follows: "This Policy Statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs established."

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34	Section II. BACKGROUND	commenter suggested edits as follows: "For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to has a nexus to health [and] safety to implementation of that program.
35	Section II. BACKGROUND	Commenter recommended the following edits: "Subsection 274g. authorizes and directs the NRC Commission to cooperate with States in the formulation of standards to assure that State and NRC Commission standards NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j(1) requires the NRC Commission to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.
36	Section II. BACKGROUND	Commenter recommended the following edits: " Section 274 further directs the NRC to periodically review State programs to ensure compliance with the provisions of Section 274. This Policy Statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs established. This Policy Statement clarifies the meaning and use of the terms "adequacy" and "compatibility." "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to the Agreement State program.
37	Section II. BACKGROUND	Commenter recommended moving paragraph from Section V. ADEQUACY AND COMPATIBILITY to be the last paragraph in BACKGROUND with an additional edit: "In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff should will seek the advice of the Agreement States. The Commission will consider such advice in its final decision."
38	Section II. BACKGROUND	Commenter suggested this section explicitly state that determinations of adequacy and compatibility cannot be made based on adherence of policy and guidance documents that are not legally binding. "Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the NRC and the Agreement States."
39	Section II. BACKGROUND	Commenter believes that the following sentence does not properly reflect the direction from Congress for NRC to establish programs of assistance to enhance the delivery of public health and safety and that the exclusive focus on adequacy misses the critical policy goal of Congressional action: "Subsection 274d. states that the NRC shall enter into an Agreement under subsection 274b., discontinuing the 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 is compatible, in all other respects, with the Commission's regulatory program."

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40	Section II. BACKGROUND	Commenter believes the following statement fails to acknowledge the significantly altered approach to source security and the impacts both operational and financial federal regulation and policies have on Agreement State Programs. Furthermore, commenter suggests the Policy Statement should acknowledge that the federal government's approach to source security is driving these changes and that NRC will use its best efforts to provide technical and other assistance to Agreement Programs to assist with the implementation of federal mandates not previously contemplated when a State agreed to assume regulatory responsibility under Section 274. "These programs have always included the security of agreement materials as an integral part of their health and safety mission as it relates to minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes physical protection of agreement material."
41	Section III. STATEMENT OF LEGISLATIVE INTENT	Three commenters suggested the following edits, which places the primary emphasis on public health and safety, while also addressing compatibility: "In order to relinquish discontinue its authority to a particular State, the NRC must find that the State program is adequate to protect public health and safety and compatible with the NRC's program for the regulation of agreement materials and that the State program is adequate to protect public health and safety.
42	Section III. STATEMENT OF LEGISLATIVE INTENT	Commenter suggested revising the paragraph with regard to NRC's ability to temporarily suspend all or part of an agreement in an emergency situation to reflect the statute as written in Section 274 of the AEA. Commenter further stated that the threshold for an emergency is a situation that creates a danger to persons.
43	Section III. STATEMENT OF LEGISLATIVE INTENT	Commenter recommended replacing "relinquish" with "discontinue" in this section. (2 instances)
44	Section III. STATEMENT OF LEGISLATIVE INTENT	Commenter believes this summary inaccurately presents the legislative intent, which provided multiple directions to NRC to develop programs of assistance to enhance the ability of Agreement States to respond to local hazards presented from byproduct material. Commenter believes the NRC is also misstating the phrasing for what forms of assistance were contemplated and what administrative support was mentioned in the Conference Report, which refers only to "cash grants".
45	Section III. STATEMENT OF LEGISLATIVE INTENT	Commenter believes the decision to terminate an agreement is not properly characterized in this section and suggested this section be revised to properly characterize this reserve power and require that the NRC present a health based risk assessment documenting the level of risk to public health and safety that would rise to such an "extraordinary circumstance."

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46	Section IV.A. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements	Commenter believes that a policy statement should not be based on another policy or concept (i.e. National Materials Program (NMP)).
47	Section IV.A. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements	Commenter suggested defining which uses of AEA material, or items of adequacy and compatibility are in the national interest and are state responsibilities.
48	Section IV.A. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements	Commenter suggested the following paragraph be moved to guidance, as edited: "NRC adopted "Principles of Good Regulation" 23 years ago to serve as a guide to both agency decision making and to individual behavior as NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, and are 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 NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The NRC further suggests that such principles may be useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program .
49	Section IV.A. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements	Commenter noted that most this paragraph is repeated in Section IV.A.2. PROGRAM IMPLEMENTATION AND PROGRAM ASSISTANCE: Basic Elements - National Materials Program. Commenter recommended consolidating the text of these paragraphs.

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ITEM	SECTION	COMMENT
50	Section IV.A.3. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Adequate to Protect Public Health and Safety	Commenter suggested referencing the AEA with regard to the following: "Accordingly , the NRC and Agreement State programs shall possess the requisite supporting legislative authority..."
51	Section IV.A.4. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Compatible in Areas of National Interest	Commenter suggested defining what compatibility means in terms of Section 274, noting that Webster's dictionary defines compatibility as "capable of existing or operation in harmony". Commenter stated that NRC has been applying the term as essentially identical (compatibility "A" and "B") or at least as restrictive as NRC's (compatibility "C"). Lastly commenter states that NRC added the word "consistent" to mean "compatibility".
52	Section IV.A.4. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Compatible in Areas of National Interest	Commenter suggested the following edits: "They should be effective and cooperatively developed and implemented by the NRC and the Agreement States..."

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53	Section IV.A.4. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Compatible in Areas of National Interest	Commenter stated that NRC added the word "uniformity" to mean "compatibility".
54	Section IV.A.4. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Compatible in Areas of National Interest	Commenter requested that NRC staff describe which aspects of licensing, inspection, and enforcement fall under the context of "national significance", "transboundary issues", and "national interests".
55	Section IV.A.5. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Basic Elements - Flexibility	Commenter suggested the following edits: "...Agreement State radiation control programs should will be provided with flexibility in program implementation and administration..."
56	Section IV.B. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: New Agreements	Commenter suggested NRC be open and clear by revising the following to indicate that NRC's policy is that Agreement States must be compatible: "With the exception of those compatibility areas where all programs should must be essentially identical, Agreement State radiation control programs..."

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57	Section IV.B. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: New Agreements	Commenter expressed confusion over why this information is included in the document. Commenter believes this section should be brief with a couple sentences and a reference to the applicable items in Section 274 of the AEA and to the policy statement in the last paragraph.
58	Section IV.B. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: New Agreements	Commenter asked if the final version of this policy statement would cause NRC to revisit or revise the NRC's Policy Statement for Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.
59	Section IV.B. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: New Agreements	Commenter stated that the Policy Statements referenced in this section do not retroactively apply to agreements that were in existence prior to the dates of these statements.
60	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter suggested moving the first paragraph to Section IV.B. PROGRAM IMPLEMENTATION AND PROGRAM ASSISTANCE: New Agreements. "The NRC will offer training and other assistance...the Agreement State will ne to do so."

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61	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter stated that the following sentence is contrary to the response from NRC in regard to a specific request from the State for NRC assistance with a sealed source and device review: "The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and limited enforcement issues."
62	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter suggested the following edits: "In addition, the NRC and Agreement States will should keep each other informed."
63	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter requested clarity regarding what type of assistance the NRC would provide with respect to the following statement: "If an Agreement State experiences difficulty in implementing their program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program."
64	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter requested clarity regarding which parts of a program could be returned with respect to the following statement: "Under certain conditions Agreement States can also voluntarily return all or part of its Agreement State program, e.g., Sealed Source and Device evaluations and uranium recovery regulatory oversight (SECY-95-0136)."

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65	Section IV.C. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Program Assistance	Commenter believes this section unduly limits the forms and opportunities of assistance the NRC was directed to provide Agreement Programs and suggested this section be revised to reflect the funding Authorities of the Commission or the direction provided by Congress.
66	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested the following edits: "...As a part of the performance evaluation process, the NRC will take necessary actions as defined [reference IMPEP Handbook or other document] to help ensure that..."
67	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested deleting the following because it is redundant: " Under Section 274 of the AEA, as amended, the NRC retains oversight authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State radiation control programs are adequate and compatible prior to entrance into a Section 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective. "
68	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested the following edits: "The IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, and integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement."

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69	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested deleting the following because it is redundant: "Performance indicators are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program."
70	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested the following edits: "The NRC's actions in addressing serious program deficiencies or emergencies will be a well-defined, clear, and vetted predictable process that is consistently and fairly applied."
71	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested the NRC implement a process by which an impartial third party can evaluate the facts and draw independent conclusions to make determinations of adequacy and mediate differences of interpretation of facts presented during the evaluation process.
72	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter suggested adding the following sentence to this section: "When making a determination of adequacy and compatibility, the NRC will not make a determination based upon the Agreement State's adherence to any [Management Directive] or [procedure] but rather based upon identifiable risks to the public health and safety. These identifiable risks must characterize the specific continuing risks to public health and safety in order for the NRC to establish deficiency finding."

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73	Section IV.D. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Evaluation	Commenter noted that IMPEP findings (i.e. Monitoring, Heightened Oversight, etc.) have not been retained in the consolidated document, and commenter supported moving this information from policy to procedure.
74	Section IV.E. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Funding	Commenter suggested the following edits: "Section 274 of the AEA does not allow Federal grant funding for the administration of Agreement State radiation control programs."
75	Section IV.E. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Funding	Commenter suggested this section be revised to acknowledge that "The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a state as a consequence of the State's entering into an Agreement with the Commission pursuant to subsection (b) of this section."
76	Section IV.E. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Performance Funding	Commenter suggested that NRC should make clear that the Commission was directed when making funding decisions to take into account the costs incurred by a State AFTER its Agreement was approved.

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77	Section IV.F. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Regulatory Development	Four commenters recommended removal of both paragraphs discussing the OAS and CRCPD because this policy statement is about the relationship between the NRC and those states that have signed an agreement with the NRC. Commenters further noted that neither of the organizations has the authority to speak on behalf of any state. Commenters believed that mention of these organizations is more appropriate in guidance instead of this policy.
78	Section IV.F. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Regulatory Development	Commenter states that the roles for the NRC and Agreement States are to work [cooperatively] and the AEA does not specify that the NRC will be the lead and final arbiter for any disagreements. Commenter requested the NRC policy be stated in this regard. "Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program."
79	Section IV.F. PROGRAM IMPLEMENTATIO N AND PROGRAM ASSISTANCE: Regulatory Development	Commenter suggested adding the following sentence to this section to promote cooperation and transparency: "The NRC will provide Agreement States with staff communications provided to the Commission regarding positions and recommendations presented by Agreement States and its membership organizations to promote transparency and cooperation between federal and state regulatory authorities."
80	Section V. ADEQUACY AND COMPATIBILITY	Commenter suggested the following edits based on text from the AEA: "In accordance with Section 274, an Agreement State program should must provide for an acceptable level of protection of public health and safety in an Agreement State.
81	Section V. ADEQUACY AND COMPATIBILITY	Commenter believes the blended approach for adequacy and compatibility is problematic and disagrees with its application.
82	Section V. ADEQUACY AND COMPATIBILITY	Commenter found that while most of the statement is included in the consolidated document, less of the Statements of Principles and Policy document exists in the combined document. Commenter noted that a large section of the "Good Regulations Principles" is missing; however, the commenter agrees with the deletion of those items.

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83	Section V. ADEQUACY AND COMPATIBILITY	Three commenters noted that language was changed from NRC "will" seek to "should" seek. Commenters recommended changing the sentence back to read as follows: "In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff should will seek the advice of the Agreement States. The Commission will consider such advice in its final decision." One commenter reasoned that the NRC should be required to involve Agreement States in all aspects of policy and regulation development to ensure that documents developed adequately address issues of the Agreement States as well as the NRC.
84	Section V. ADEQUACY AND COMPATIBILITY	Commenter recommended adding a new sentence to the beginning of the section: " Section 274 requires that Agreement State programs be both "adequate to protect the public health and safety" and "compatible with the Commission's program."
85	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter suggested the following edits: "An "adequate" program should include implementation of those program elements not required for compatibility but necessary to maintain an acceptable level of protection of public health and safety within an Agreement State."
86	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter believes the NRC has introduced the word "equivalent" in the policy to mean "adequate". Commenter further noted that a state can only be more restrictive for compatibility categories "B" and "C".
87	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter requested clarification for the following: "Such consideration will occur only if concerns arise ."
88	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter recommended adding a sentence after the first sentence in the first paragraph that reads as follows: " These program elements make up the category Health and Safety (H&S). "
89	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter recommended the following edits in the section: "To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in Sections 1 through 5, that the NRC-Commission will use to define the scope of its review of the program. The Commission Commission will also consider...In adopting such requirements, Agreement States shall adopt the essential objectives of those of the NRC-Commission ."
90	Section V.A. ADEQUACY AND COMPATIBILITY: ADEQUACY	Commenter stated that the Policy Statement should say directly that adequacy is based on identified risks to public health and safety.

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91	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Five commenters disagreed with NRC's revision of the word "should" to "shall" and suggested changing the sentences back to read as follows: "Specifically, Agreement States shall should adopt a limited number of legally binding requirements based on those of the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shall should adopt the essential objectives of those of the NRC."
92	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter suggested retaining the original 1997 Policy Statement language because the proposed text 1) moves the attention [away] from having these legally binding requirements because of each one's particular health and safety significance; 2) constrains the NRC to have a limited number, while the original text limits the number based on the particular significant health and safety events; 3) moves the focus from a particular health and safety statement and makes NRC consider limiting the numbers because NRC may have already issued too many requirements; and 4) provides less flexibility in addressing particular health and safety events without limiting the number based on the number of "events" instead of requirements.
93	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter recommended the following edits: "Specifically, Agreement States shall adopt a limited number of legally binding requirements based on those of the NRC because of their particular significant and direct health and safety significance."
94	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter stated that if the original text of the 1997 Policy Statement is expanded or revised, the policy should be limited to saying, "significant and direct" and include examples and the disclaimer that the examples are not all-inclusive.
95	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter recommended that the original 1997 text be retained with regard to the Commission minimizing the number of NRC regulatory requirements that the Agreement States will be requested to adopt to maintain compatibility because the changes proposed will tend to make Agreement States become "NRC Clones" in how they run their programs. Due to different organizational structures, funding sources, business processes, rulemaking processes, and many other factors, the Agreement States must have the flexibility to run their programs dictated by their state governments and not NRC.

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96	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter suggested the following edits: "b) authorize the State to promulgate regulatory legally binding requirements necessary to provide reasonable assurance of protection of public health and safety; c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and d) be otherwise consistent compatible with applicable Federal statutes.
97	Section V.A.1. ADEQUACY AND COMPATIBILITY: ADEQUACY - Legislation and Legal Authority	Commenter questioned what was meant by "limited number" and why the number of legally binding requirements would be limited.
98	Section V.A.4. ADEQUACY AND COMPATIBILITY - Personnel	Commenter asked for clarification on what constitutes a 'sufficient' number of personnel.
99	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter suggested the following: "Those program elements are generally should be limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications," because the word "generally" made the sentence vague and capricious.
100	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter recommended that the original 1997 text be retained and suggested appropriate changes be addressed in the Management Directives. Commenter agreed with the concept of alternative methodologies to compatibility than relying on a 3-year time frame to adopt rules and suggested consideration of changes to the Management Directive to have "important" rules vs. minor rules. Commenter noted that the rules are currently weighted the same and that the Management Directive allows alternative approaches to rules such as license conditions and orders. Commenter noted this approach would be consistent with NRC "Cumulative Effects of Regulation (CER)" where rules are prioritized.
101	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter noted that the "H&S" category for regulations is missing from this section but should be included for clarification. Commenter understood the "H&S" category to be equivalent to compatibility "C" in NRC's estimation.
102	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter stated support for deletion of the H&S Category.

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ITEM	SECTION	COMMENT
103	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter stated that the following sentence is not accurate and cited two examples related to the practice of medicine/training and experience and global positioning tracking of vehicles used for industrial radiography at temporary job sites: "An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC , or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility A, B, or C)."
104	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter questioned how a state can preclude the NRC's ability to evaluate the effectiveness of a program: "3) Not effectively preclude, the ability of the NRC to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety."
105	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter suggested moving this sentence to the beginning of Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY: "For purposes of compatibility, the State should address program elements assigned Categories A, B, and C."
106	Section V.B. ADEQUACY AND COMPATIBILITY: COMPATIBILITY	Commenter recommended the following edits in the section: "1) Be compatible with those of the Commission NRC (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); 2) 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; and 3) Not preclude or effectively preclude, the ability of the Commission NRC to evaluate the effectiveness..."
107	Section V.B.1. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category A	Commenter stated the proposed changes clarify the meaning.
108	Section V.B.1. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category A	Commenter suggested edits as follows: "1. Category A - Basic Radiation Protection Standards: For purposes of this Policy Statement, this category includes basic radiation protection standards..."
109	Section V.B.1. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category A	Commenter suggested NRC provide an example where a federal statute gives the State authority to adopt a different standard or consider deleting this text, if none exist: "Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards."

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ITEM	SECTION	COMMENT
110	Section V.B.1. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category A	Commenter recommended replacing "NRC" with "Commission" in this section. (1 instance)
111	Section V.B.1. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category A	Commenter suggested removing the footnote and instead including the sentence as part of the main paragraph text.
112	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Three commenters suggested the following: "This category will be limited to a small number of program elements that have an a [serious/considerable/substantial] impact on public health..."
113	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Four commenters disagreed with NRC's revision of the word "should" to "shall" and suggested changing the sentences back to read as follows: "However, such program elements of an Agreement State relating to agreement material shall shall should ..."
114	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter recommended that examples be maintained in the Policy Statement and that NRC should consider adding a disclaimer that the examples are not all-inclusive to avoid misinterpretations.
115	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter stated that the NRC should absolutely not consider economic factors in making a compatibility B designation, or any compatibility designation because this is not part of the AEA agreement and States must have the flexibility to fund their programs according to their needs. Furthermore, States go through unique cost/impact economic analysis as a part of the rule making process. If economic factors were part of the compatibility determination and it conflicted with state statutes, the state would not be compatible with NRC.

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ITEM	SECTION	COMMENT
116	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter strongly recommended retaining the original 1997 text because changing the wording deemphasizes that the Agreement States should be given the flexibility when addressing the majority of program elements necessary for a compatible program and is contradictory to the closing paragraph. Commenter further stated that NRC should not think that by keeping the original text in any way limits their authority to make necessary rules to protect public health and safety, which is clearly authorized by the AEA and any "statement of policy" cannot be considered to change the Commission's authority.
117	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter supports the proposed language and believes the use of examples provides sufficient clarification to the definition. Similarly, another commenter stated the proposed changes clarify the meaning.
118	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter stated that the wording of this indicator could be applied to any regulations listed in Category C or the current Health and Safety Category because all regulations have an impact on public health and safety. Commenter recommended either a) maintaining the wording as proposed but removing the phrase, "Examples include...radiography certification." and replacing the text with, "This category is limited to SSDRs, transportation regulations, and radiography certification; or b) maintain the original 1997 text, "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."
119	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter noted that elsewhere in the document "national interest and national significance" were used in place of "cross jurisdictional": "Cross Jurisdictional Program Elements : For purposes of this Policy Statement, this category pertains to program elements that cross jurisdictional boundaries."
120	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter questioned what was meant by a "small number" and requested data, if a review of relevant regulations and compatibility had been performed: "This category will be limited to a small number of program elements that have an impact on public health and safety and should be addressed to ensure uniformity of regulation on a nationwide basis."
121	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter requested training and experience for authorized individuals in 10 CFR Part 35 be listed as an example: "Examples include, but are not limited to: sealed source and device registration certificates, transportation regulations, and radiography certification."

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ITEM	SECTION	COMMENT
122	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter noted that title was changed from "Program Elements with Significant Transboundary Impacts" to "Cross Jurisdictional Program Elements" and suggested revising the title as follows: " Significant Cross Jurisdictional Program Elements" to maintain the concept that Category B elements are limited to a small number of elements that have significant impact.
123	Section V.B.2. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category B	Commenter recommended replacing "NRC" with "Commission" in this section. (1 instance)
124	Section V.B.3. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category C	Commenter suggested revising the following: "Agreement State program elements may be more restrictive than Commission program elements; however, they should not be so restrictive as to prohibit a licensed activity. " and stated that if an Agreement States wants to prohibit a licensed activity because of health and safety or physical protection reasons then they should be able to do so under Category C. Commenter reasoned that including the disclaimer blurs the line between Category B and C and that Agreement States must have the flexibility to tailor regulations based on their business process and the state's health and safety considerations under Category C. Commenter provided examples for areas of their program that would not be compatible with NRC if the disclaimer is retained.
125	Section V.B.3. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category C	Commenter recommended replacing "NRC" with "Commission" in this section. (2 instances)
126	Section V.B.4. ADEQUACY AND COMPATIBILITY: COMPATIBILITY - Category D	Commenter suggested renaming "Category D" to "Category NA" or "Category NR" for not applicable or not required, respectively.
127	Section VI. SUMMARY AND CONCLUSIONS	Commenter recommended including the following sentence in the last paragraph of the section noting that the briefings of the Commission by CRCPD and OAS representatives are of great benefit to all parties: "The NMP should also include the formal sharing of information and views such as briefings of the Commission by state personnel." Another commenter supported this addition.
128	Section VI. SUMMARY AND CONCLUSIONS	Commenter recommended that the last paragraph be returned to its original text as in the 1997 Policy Statement.

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ITEM	SECTION	COMMENT
129	Section VI. SUMMARY AND CONCLUSIONS	Commenter noted that although proposed changes to ADEQUACY section are subtle, they are significant and should not be made for reasons previously stated.
130	Section VI. SUMMARY AND CONCLUSIONS	Commenter recommended replacing "NRC" with "Commission" in this section. (5 instances)
131	Section VI. SUMMARY AND CONCLUSIONS	Commenter recommended the following edits in this section: "a coherent and consistent nationwide program for the regulation of agreement material. the By adopting the criteria...this approach achieves a proper balance between the need for Agreement State flexibility and the need for a NMP that is coordinated..."