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Proposed Policy Statement for the Agreement State Program

A. PURPOSE.

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).¹ Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of agreement material. This policy statement supersedes the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” and the “Statement of Principles and Policy for the Agreement State Program.”

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Subsection 274b. that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of agreement material; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and maintain programs that are compatible with the NRC’s regulatory program.

Although not defined in the AEA, the National Materials Program (NMP) is a term to describe the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement material. The mission of the NMP is to provide a coherent national system for the regulation of agreement material with the

¹ Subsection 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC discontinues and the State assumes regulatory authority over some or all of these materials. The material over which the State receives regulatory authority under such agreement is termed “agreement material.”

24 goal of protecting public health and safety through compatible regulatory programs. Under the
25 NMP, the NRC and Agreement States function as regulatory partners. The roles and
26 responsibilities of the NRC and the Agreement States are based on their legislative authority,
27 program needs, and expertise. Two national organizations—the Organization of Agreement
28 States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD)—which
29 are composed of State radiation protection programs, also play important roles within the NMP.

30

31 B. BACKGROUND.

32 This policy statement is intended solely as guidance for the NRC and the Agreement
33 States in the implementation of the Agreement State Program. This policy statement does not
34 itself impose legally binding requirements on the Agreement States. In addition, nothing in this
35 policy statement expands the legal authority of Agreement States beyond that already granted
36 to them by Section 274 of the AEA and other relevant legal authority; nor does this policy
37 statement diminish or constrain the NRC’s authority under the AEA. Implementation procedures
38 adopted pursuant to this policy statement shall be consistent with the legal authorities of the
39 NRC and the Agreement States.

40 This policy statement presents the NRC’s policy for determining the adequacy and
41 compatibility of Agreement State programs. This policy statement clarifies the meaning and use
42 of the terms “adequate to protect public health and safety” and “compatible with the NRC’s
43 regulatory program” as applied to Agreement State programs. The terms “adequate” and
44 “compatible” represent fundamental concepts in the Agreement State programs authorized in
45 1959 by Section 274 of the AEA. Subsection 274d. states that the NRC shall enter into an
46 Agreement under Subsection 274b., which discontinues the NRC’s regulatory authority over
47 specified AEA radioactive materials and activities within a State, provided that the State’s
48 program is adequate to protect public health and safety and is compatible with the

49 Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to
50 cooperate with States in the formulation of standards to assure that State and NRC programs
51 for protection against hazards of radiation will be coordinated and compatible. Subsection
52 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States
53 under the Agreements to ensure compliance with the provisions of Section 274.

54 The NRC and Agreement State radiation control programs maintain regulatory authority
55 for the safe and secure handling, use, and storage of agreement material. These programs
56 have always included the security of agreement material as an integral part of their health and
57 safety mission as it relates to controlling and minimizing the risk of exposure to workers and the
58 public. Following the events of September 11, 2001, the NRC's regulatory oversight has
59 included developing and implementing enhanced security measures. For the purposes of this
60 policy statement, public health and safety includes physical protection of agreement material.

61

62 C. STATEMENT OF LEGISLATIVE INTENT.

63 In 1954, the AEA did not initially specify a role for the States in regulating the use of
64 nuclear material. Many States were concerned as to what their responsibilities in this area
65 might be and expressed interest in clearly defining the boundaries of Federal and State
66 authority over nuclear material. This need for clarification was particularly important in view of
67 the fact that although the Federal Government retained sole responsibility for protecting public
68 health and safety from the radiation hazards of AEA radioactive materials, defined as byproduct,
69 source, and special nuclear material, the States maintained the responsibility for protecting the
70 public from the radiation hazards of other sources such as x-ray machines and naturally
71 occurring radioactive material.

72 Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a
73 statutory framework under which States could assume and the NRC could discontinue

74 regulatory authority over byproduct, source, and small quantities of special nuclear material
75 insufficient to form a critical mass. The NRC continued to retain regulatory authority over the
76 licensing of certain facilities and activities including, nuclear reactors, quantities of special
77 nuclear material sufficient to form a critical mass, the export and import of nuclear materials,
78 and matters related to common defense and security.

79 The legislation did not authorize a wholesale relinquishment or abdication by the
80 Commission of its regulatory responsibilities but only a gradual, carefully considered turnover.
81 Congress recognized that the Federal Government would need to assist the States to ensure
82 that they developed the capability to exercise their regulatory authority in a competent and
83 effective manner. Accordingly, the legislation authorized the NRC to provide training, with or
84 without charge, and other services to State officials and employees as the Commission deems
85 appropriate. However, in rendering this assistance, Congress did not intend that the NRC
86 would provide any grants to a State for the administration of a State regulatory program. This
87 was fully consistent with the objectives of Section 274 to qualify States to assume independent
88 regulatory authority over certain defined areas under their Agreement and to permit the NRC to
89 discontinue its regulatory responsibilities in those areas.

90 In order to discontinue its authority, the NRC must find that the State program is
91 compatible with the NRC program for the regulation of agreement material and that the State
92 program is adequate to protect public health and safety. In addition, the NRC has an obligation,
93 pursuant to Subsection 274j. of the AEA, to periodically review existing Agreement State
94 programs to ensure continued adequacy and compatibility. Subsection 274j. of the AEA
95 provides that the NRC may terminate or suspend all or part of its agreement with a State if the
96 NRC finds that such termination is necessary to protect public health and safety or that the
97 State has not complied with the provisions of Subsection 274j. In these cases, the NRC must
98 offer the State reasonable notice and opportunity for a hearing. In cases where the State has

99 requested termination of the agreement, notice and opportunity for a hearing are not necessary.
100 In addition, the NRC may temporarily suspend all or part of an agreement in the case of an
101 emergency situation.

102

103 D. PROGRAM IMPLEMENTATION.

104 1. Implementation of the Agreement State Program is described below and includes
105 (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic
106 basis; (c) the responsibility to ensure adequate protection of public health and safety, including
107 physical protection of agreement material; (d) compatibility in areas of national interest; and
108 (e) sufficient flexibility in program implementation and administration to accommodate individual
109 State needs.

110 i. Principles of Good Regulation.

111 In 1991, the Commission adopted the "Principles of Good Regulation" to serve as a
112 guide to both agency decision making and to individual behavior of NRC employees. There are
113 five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability.
114 Adherence to these principles has helped to ensure that the NRC's regulatory activities have
115 been of the highest quality, and are appropriate and consistent. The "Principles of Good
116 Regulation" recognize that strong, vigilant management and a desire to improve performance
117 are prerequisites for success, for both regulators and the regulated industry. The NRC's
118 implementation of these principles has served the public, the Agreement States, and the
119 regulated community well. Such principles are useful as a part of a common culture of the NMP
120 that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC
121 encourages each Agreement State to adopt a similar set of principles for use in its own
122 regulatory program. These principles should be incorporated into the day-to-day operational
123 fabric of the NMP.

124 ii. Performance Assessment.

125 To ensure that Agreement State programs continue to provide adequate protection of
126 public health and safety and are compatible with the NRC's regulatory program, periodic
127 program assessment is needed. The NRC, in cooperation with the Agreement States,
128 established and implemented the IMPEP. The IMPEP is a performance evaluation process that
129 provides the NRC and Agreement State management with systematic, integrated, and reliable
130 evaluations of the strengths and weaknesses of their respective radiation control programs and
131 identification of areas needing improvement.

132 iii. Adequate to Protect Public Health and Safety.

133 The NRC and the Agreement States have the responsibility to ensure adequate
134 protection of public health and safety in the administration of their respective regulatory
135 programs, including physical protection of agreement material. Accordingly, the NRC and
136 Agreement State programs shall possess the requisite supporting legislative authority,
137 implementing organization structure and procedures, and financial and human resources to
138 effectively administer a radiation control program that ensures adequate protection of public
139 health and safety.

140 iv. Compatible in Areas of National Interest.

141 The NRC and the Agreement States have the responsibility to ensure that the radiation
142 control programs are compatible. Such radiation control programs should be based on a
143 common regulatory philosophy including the common use of definitions and standards. The
144 programs should be effective and cooperatively implemented by the NRC and the Agreement
145 States and also should provide uniformity and achieve common strategic outcomes in program
146 areas having national significance.

147 Such areas of national significance include aspects of licensing, inspection and
148 enforcement, response to incidents and allegations, and safety reviews for the manufacture and

149 distribution of sealed sources and devices. Furthermore, communication using a nationally
150 accepted set of terms with common understanding, ensuring an adequate level of protection of
151 public health and safety that is consistent and stable across the nation, and evaluation of the
152 effectiveness of the NRC and Agreement State programs for the regulation of agreement
153 material with respect to protection of public health and safety are essential to maintaining a
154 strong NMP.

155 v. Flexibility.

156 With the exception of those compatibility areas where programs should be essentially
157 identical, Agreement State radiation control programs have flexibility in program implementation
158 and administration to accommodate individual State preferences, State legislative direction, and
159 local needs and conditions. A State has the flexibility to design its own program, including
160 incorporating more stringent, or similar, requirements provided that the requirements for
161 adequate protection of public health and safety are met and compatibility is maintained.
162 However, the exercise of such flexibility should not preclude a practice authorized by the AEA,
163 and in the national interest.

164 2. New Agreements.

165 Section 274 of the AEA requires that once a decision to request Agreement State status
166 is made by the State, the Governor of that State must certify to the NRC that the State desires
167 to assume regulatory responsibility and has a program for the control of radiation hazards
168 adequate to protect public health and safety with respect to the materials within the State that
169 would be covered by the proposed agreement. This certification will be provided in a letter to
170 the NRC that includes a number of documents in support of the certification. These documents
171 include the State's enabling legislation, the radiation control regulations, staffing plan, a
172 narrative description of the State program's policies, practices, and procedures, and a proposed
173 agreement.

174 The NRC's policy statement, "Criteria for Guidance of States and NRC in
175 Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through
176 Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at
177 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the content these
178 documents are required to cover. The NRC reviews the request and publishes notice of the
179 proposed agreement in the *Federal Register* to provide an opportunity for public comment.
180 After consideration of public comments, if the NRC determines that the proposed State program
181 is adequate for protection of public health and safety and compatible with the NRC's regulatory
182 program, the Governor and Chairman of the NRC sign a formal document memorializing the
183 agreement.

184 3. Program Assistance.

185 The NRC will offer training and other assistance to States, such as assistance in
186 developing regulations and program descriptions to help individual States prepare their request
187 for entering into an Agreement and to help them prior to the assumption of regulatory authority.
188 Following approval of the agreement and assumption of regulatory authority by a new
189 Agreement State, to the extent permitted by resources, the NRC may provide training
190 opportunities and offer other assistance such as review of proposed regulatory changes to help
191 Agreement States administer their regulatory responsibilities. However, it is the responsibility of
192 the Agreement State to ensure that they have a sufficient number of qualified staff to implement
193 their program. If the NRC is unable to provide the training, the Agreement State will need to do
194 so.

195 The NRC may also use its best efforts to provide specialized technical assistance to
196 Agreement States to address unique or complex licensing, inspection, incident response, and
197 limited enforcement issues. In areas where Agreement States have particular expertise or are
198 in the best position to provide immediate assistance to the NRC or other Agreement States,

199 they are encouraged to do so. In addition, the NRC and Agreement States will keep each other
200 informed about relevant aspects of their programs.

201 If an Agreement State experiences difficulty in implementing its program, the NRC will,
202 to the extent possible, assist the State in maintaining the effectiveness of its radiation control
203 program. Under certain conditions, an Agreement State can also voluntarily return all or part of
204 its Agreement State program.

205 4. Performance Evaluation.

206 Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that
207 Agreement State programs provide adequate protection of public health and safety and are
208 compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC
209 will determine whether the Agreement State programs are adequate and compatible prior to
210 entrance into a Subsection 274b. agreement and will periodically review the program to ensure
211 they continue to be adequate and compatible after an agreement becomes effective.

212 The NRC, in cooperation with the Agreement States, established and implemented the
213 IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance
214 Evaluation Program (IMPEP)," IMPEP is a performance evaluation process that provides the
215 NRC and Agreement State management with systematic, integrated, and reliable evaluations of
216 the strengths and weaknesses of their respective radiation control programs and identification of
217 areas needing improvement. The same criteria are used to evaluate and ensure that regulatory
218 programs are adequate to protect public health and safety and that Agreement State programs
219 are compatible with the NRC's program. The IMPEP process employs a Management Review
220 Board, composed of senior NRC managers and an Agreement State liaison provided by the
221 OAS to make a determination of program adequacy and compatibility.

222 As a part of the performance evaluation process, the NRC will take necessary actions to
223 help ensure that Agreement State radiation control programs remain adequate and compatible.

224 These actions may include more frequent IMPEP reviews of Agreement State programs and
225 providing assistance to help address weaknesses or areas needing improvement within an
226 Agreement State program. Monitoring, heightened oversight, probation, suspension, or
227 termination of an agreement may be applied for certain program deficiencies or emergencies
228 (e.g. loss of funding, natural or man-made events, pandemic). The NRC's actions in addressing
229 program deficiencies or emergencies will be a well-defined predictable process that is
230 consistently and fairly applied.

231 5. Program Funding.

232 Section 274 of the AEA permits the NRC to offer training and other assistance to a State
233 in anticipation of entering into an Agreement with the NRC. Section 274 of the AEA does not
234 allow Federal funding for the administration of Agreement State radiation control programs.
235 Given the importance to public health and safety of having well trained radiation control program
236 personnel, the NRC may offer certain relevant training courses and notify Agreement State
237 personnel of their availability. These training programs also help to ensure compatible
238 approaches to licensing and inspection and thereby strengthen the NMP.

239 6. Regulatory Development.

240 The NRC and Agreement States will cooperate in the development of both new and
241 revised regulations and policies. Agreement States will have early and substantive involvement
242 in the development of regulations affecting protection of public health and safety and of policies
243 and guidance documents affecting administration of the Agreement State program. The NRC
244 and Agreement States will keep each other informed about their individual regulatory
245 requirements (e.g., regulations, orders, or license conditions) and the effectiveness of those
246 regulatory requirements so that each has the opportunity to make use of proven regulatory
247 approaches to further the effective and efficient use of resources. In order to avoid conflicts,
248 duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation

249 of agreement material on a nationwide basis, Agreement States should provide a similar
250 opportunity to the NRC to make it aware of, and to provide the opportunity to review and
251 comment on, proposed changes in regulations and significant changes to Agreement State
252 programs, policies, and regulatory guidance.

253 Two national organizations composed of State radiation protection programs facilitate
254 participation and involvement with the development of regulations, guidance, and policy. The
255 OAS provides a forum for Agreement States to work with each other and with the NRC on
256 regulatory issues, including centralized communication on radiation protection matters between
257 the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect
258 the public, radiation workers, and patients from unnecessary radiation exposure. One product
259 of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews
260 Suggested State Regulations for compatibility.

261

262 E. ADEQUACY AND COMPATIBILITY.

263 In accordance with Section 274 of the AEA, any State that chooses to establish an
264 Agreement State program must provide for an acceptable level of protection of public health and
265 safety. This is the “adequacy” component. The Agreement State must also ensure that its
266 program serves an overall nationwide interest in radiation protection. This is the “compatibility”
267 component.

268 By adopting the criteria for adequacy and compatibility as discussed in this policy
269 statement, the NRC provides a broad range of flexibility in the administration of individual
270 Agreement State programs. Recognizing the fact that Agreement States have responsibilities
271 for radiation sources other than agreement material, the NRC allows Agreement States to
272 fashion their programs to reflect specific State needs and preferences.

273 The NRC will minimize the number of NRC regulatory requirements that the Agreement
274 States will be requested to adopt in an identical manner to maintain compatibility. At the same
275 time, requirements in these compatibility categories allow the NRC to ensure that an orderly
276 pattern for the regulation of agreement material exists nationwide. The NRC believes that this
277 approach achieves a proper balance between the need for Agreement State flexibility and the
278 need for an NMP that is coherent and compatible in the regulation of agreement material across
279 the country.

280 Program elements² for adequacy focus on the protection of public health and safety
281 within a particular Agreement State while program elements for compatibility focus on the
282 impacts of an Agreement State's regulation of agreement material on a nationwide basis or its
283 potential effects on other jurisdictions. Some program elements for compatibility may also
284 impact public health and safety; therefore, they may also be considered program elements for
285 adequacy.

286 In identifying those program elements for adequate and compatible programs, or any
287 changes thereto, the NRC staff will coordinate with the Agreement States.

288

289 1. Adequacy.

290 An "adequate" program includes those program elements of a radiation control
291 regulatory program necessary to maintain an acceptable level of protection of public health and
292 safety within an Agreement State. An Agreement State's radiation control program is adequate
293 to protect public health and safety if administration of the program provides reasonable
294 assurance of protection of public health and safety in regulating the use of agreement material.
295 The level of protection afforded by the program elements of the NRC's materials regulatory

² 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 implementation of that program.

296 program is presumed to be adequate to provide a reasonable assurance of protection of public
297 health and safety. Therefore, the overall level of protection of public health and safety provided
298 by a State program should be equivalent to, or greater than, the level provided by the NRC
299 program. To provide reasonable assurance of protection of public health and safety, an
300 Agreement State program should contain the five essential program elements, identified in
301 items i. through v. of this section, that the NRC and Agreement States will use to define the
302 scope of the review of the program. The NRC and Agreement States will also consider, when
303 appropriate, other program elements of an Agreement State that appear to affect the program's
304 ability to provide reasonable assurance of the protection of public health and safety.

305 i. Legislation and Legal Authority:

306 Agreement State statutes shall: (a) authorize the State to establish a program for the
307 regulation of agreement material and provide authority for the assumption of regulatory
308 responsibility under an Agreement with the NRC; (b) authorize the State to promulgate
309 regulatory requirements necessary to provide reasonable assurance of protection of public
310 health and safety; (c) authorize the State to license, inspect, and enforce legally binding
311 requirements such as regulations and licenses; and (d) be otherwise consistent with applicable
312 Federal statutes. In addition, the State should have existing legally enforceable measures such
313 as generally applicable rules, orders, license provisions, or other appropriate measures,
314 necessary to allow the State to ensure adequate protection of public health and safety in the
315 regulation of agreement material in the State. Specifically, Agreement States should adopt
316 legally binding requirements based on those identified by the NRC because of their particular
317 health and safety significance. In adopting such requirements, Agreement States shall
318 implement the essential objectives articulated in the NRC requirements.

319

320

321 ii. Licensing.

322 The Agreement State shall conduct appropriate evaluations of proposed uses of
323 agreement material, before issuing a license to authorize such use, to ensure that the proposed
324 licensee's need and proposed uses of agreement material are in accordance with the AEA and
325 that operations can be conducted safely. Licenses shall provide for reasonable assurance of
326 public health and safety protection in the conduct of licensed activities.

327

328 iii. Inspection and Enforcement.

329 The Agreement State shall periodically conduct inspections of licensed activities
330 involving agreement material to provide reasonable assurance of safe licensee operations and
331 to determine compliance with its regulatory requirements. When determined to be necessary by
332 the State, the State should take timely enforcement action against licensees through legal
333 sanctions authorized by State statutes and regulations.

334 iv. Personnel.

335 The Agreement State shall be staffed with a sufficient number of qualified personnel to
336 implement its regulatory program for the control of agreement material.

337 v. Incidents and Allegations.

338 The Agreement State shall respond to and conduct timely inspections or investigations
339 of incidents, reported events, and allegations involving agreement material within the State's
340 jurisdiction to provide reasonable assurance of protection of public health and safety.

341 2. Compatibility.

342 A "compatible" program consists of those program elements necessary to sustain an
343 orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to
344 adopt and implement program elements within the State's jurisdiction that are not addressed by
345 the NRC, or program elements not required for compatibility (i.e., those NRC program elements

346 not assigned to Compatibility Category A, B, or C). However, such program elements of an
347 Agreement State relating to agreement material shall (1) be compatible with those of the NRC
348 (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an
349 orderly pattern in the regulation of agreement material on a nationwide basis); (2) not preclude a
350 practice authorized by the AEA and in the national interest; and (3) not preclude the ability of the
351 Commission to evaluate the effectiveness of the NRC and Agreement State programs for
352 agreement material with respect to protection of public health and safety. For purposes of
353 compatibility, the State shall adopt program elements assigned Compatibility Categories A, B,
354 and C.

355 i. Category A - Basic Radiation Protection Standards.

356 This category includes basic radiation protection standards that encompass dose limits,
357 concentration and release limits related to radiation protection in part 20 of title 10 of the *Code*
358 *of Federal Regulations* (10 CFR), that are generally applicable, and the dose limits for land
359 disposal of radioactive waste in 10 CFR 61.41.³ Also included in this category are a limited
360 number of definitions, signs, labels, and scientific terms that are necessary for a common
361 understanding of radiation protection principles among licensees, regulatory agencies, and
362 members of the public. Such State standards should be essentially identical to those of the
363 NRC, unless Federal statutes provide the State authority to adopt different standards. Basic
364 radiation protection standards do not include constraints or other limits below the level
365 associated with “adequate protection” that take into account considerations such as economic
366 cost and other factors.

367

³ The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States the flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable 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 essentially identical to that afforded by NRC requirements.

368 ii. Category B – Cross Jurisdictional Program Elements.

369 This category pertains to a small number of program elements that cross jurisdictional
370 boundaries and that should be addressed to ensure uniformity of regulation on a nationwide
371 basis. Examples include, but are not limited to, sealed source and device registration
372 certificates, transportation regulations, and radiography certification. Agreement State program
373 elements shall be essentially identical to those of the NRC. Because program elements used in
374 the Agreement State Program are necessary to maintain an acceptable level of protection of
375 public health and safety, economic factors⁴ should not be considered.

376 iii. Category C - Other NRC Program Elements.

377 These are other NRC program elements that are important for an Agreement State to
378 implement in order to avoid conflicts, duplications, gaps, or other conditions that would
379 jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis.
380 Such Agreement State program elements should embody the essential objective of the
381 corresponding NRC program elements. Agreement State program elements may be more
382 restrictive than NRC program elements; however, they should not be so restrictive as to prohibit
383 a practice authorized by the AEA and in the national interest without an adequate public health
384 and safety or environmental basis related to radiation protection.

385 iv. Category D - Program Elements Not Required for Compatibility.

386 These are program elements that do not meet any of the criteria listed in Compatibility
387 Category A, B, or C above and are not required to be adopted for purposes of compatibility.

388 v. Category NRC - Areas of Exclusive NRC Regulatory Authority.

389 These are program elements over which the NRC cannot discontinue its regulatory
390 authority pursuant to the AEA or provisions of title 10 of the *Code of Federal Regulations*.

⁴ For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

391 However, an Agreement State may inform its licensees of these NRC requirements through an
392 appropriate mechanism under the State's administrative procedure laws as long as the State
393 adopts these provisions solely for the purposes of notification, and does not exercise any
394 regulatory authority as a result.

395

396 F. CONCLUSION.

397 The NRC and Agreement States will continue to jointly assess the NRC and Agreement
398 State programs for the regulation of agreement material to identify specific changes that should
399 be considered based on experience or to further improve overall safety, performance,
400 compatibility, and effectiveness.

401 The NRC encourages Agreement States to adopt and implement program elements that
402 are patterned after those adopted and implemented by the NRC to foster and enhance an NMP
403 that establishes a coherent and compatible nationwide program for the regulation of agreement
404 material.

405