UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 14, 1989

MEMORANDUM FOR: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Curtiss

FROM: William C. Parler
General Counsel

SUBJECT: THE COMMISSION'S LEGAL AUTHORITY UNDER THE COMPATIBILITY STANDARD IN SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO REQUIRE AGREEMENT STATES TO ADOPT CRITERIA THAT ARE IDENTICAL TO THOSE SET FORTH IN THE COMMISSION'S BELOW REGULATORY CONCERN (BRC) POLICY STATEMENT (i.e., AGREEMENT STATE BRC CRITERIA CAN BE NEITHER LESS STRINGENT NOR MORE STRINGENT THAN THE CRITERIA ESTABLISHED BY THE COMMISSION.) (RESPONSE TO INSTRUCTION TO THE GENERAL COUNSEL ON PAGE 3 OF STAFF REQUIREMENTS MEMORANDUM OF OCTOBER 13, 1989, RELATING TO SECY-89-184.)

Conclusion

For the reasons set forth in the following analysis, it is my opinion that the Commission has adequate legal authority under the compatibility standard of section 274 of the Atomic Energy Act of 1954, as amended, to require Agreement States to adopt BRC criteria identical to those of the NRC. However, under well-established principles of administrative law, the BRC policy statement itself is an ineffective instrument for the exercise of that authority.

Analysis

The 1959 Federal-State Amendment (Public Law 86-373, 73 Stat. 688) which added a new section 274 to the Atomic Energy Act of 1954, as amended, established a statutory framework under which the Commission could relinquish and individual States could assume, as they became ready to do so, certain defined areas of regulatory jurisdiction over source, byproduct and special nuclear material. Prior to the enactment of Public Law 86-373, the Atomic Energy Act of 1954 was silent on the question of State regulatory jurisdiction and provided no definitive guidance on the degree to which the Federal government had preempted the radiation protection field. Recognizing the growing interest and concern of the States in protecting the public from the hazards of radiation and the need to eliminate the growth of overlapping and potentially conflicting State and Federal regulatory requirements, Congress undertook the task of establishing a statutory framework which would enable the Federal and State governments to carry out their respective regulatory responsibilities in a manner which would assure that the health and safety of the public is adequately protected. In drafting the legislation that became section 274,

Congress recognized the importance, on the one hand, of maintaining uniformity in matters affecting the national interest and, on the other hand, of providing the flexibility necessary to accommodate significant but unique concerns of a particular state or locality.

As memorialized in section 274a., the purpose of the amendment was to recognize the interests of the States in the peaceful uses of atomic energy, clarify the respective responsibilities of the States and the Commission with respect to the regulation of byproduct, source and special nuclear materials, promote an orderly regulatory pattern between Federal and State governments respecting radiation hazards and nuclear development and use and establish procedures for the discontinuance of certain of the Commission's regulatory responsibilities and the assumption thereof by the States. By enacting section 274, Congress made quite clear that the regulation and control of radiation hazards from source, byproduct, and special nuclear materials was preempted by the Federal government and that such preemption would end ". . . in any State only upon the effective date of an agreement between the State and the Commission under subsection b. and only to the extent provided in the agreement." (Emphasis supplied.) 1/ Unlike an earlier proposal which would have permitted Federal and State governments to exercise dual regulatory

---

1/ Letter of August 26, 1959 from A.R. Luedecke, General Manager, U.S. Atomic Energy Commission to Hon. Clinton P. Anderson, Chairman, Joint Committee on Atomic Energy, as printed in JCAE Hearings on Federal-State Relationships in the Atomic Energy Field, 86th Congress, 1st Sess., at p. 600. As the following excerpt from the Joint Committee Print, "Selected Materials on Federal-State Cooperation in the Atomic Energy Field," 86th Cong., 1st sess., March 1959, at p. 32, makes clear, Commission action exempting certain items from regulatory control does not furnish a basis for the exercise of State regulatory jurisdiction:

> "It should be noted that the Commission may grant exemptions from licensing requirements under section 62 or 81 of the act applicable to producers, distributors and processors of articles containing source and byproducts materials where the grant of such exemptions would be consistent with public health and safety. Under the bill, the grant of such exemptions under section 62 or 81 would not furnish a basis for the exercise of State regulatory jurisdiction. Thus, Commission exemptions from its regulatory controls for items containing trace or other innocuous quantities of byproduct, source or special nuclear material would not result in the sale or distribution of such commodities becoming subject to State regulatory jurisdiction."

authority over these materials, 2/ it was not the intent of section 274 ". . . to leave any room for the exercise of concurrent jurisdiction by the States to control radiation hazards from those materials." 3/

Throughout the legislative process which culminated in the enactment of section 274, emphasis was placed on the importance of and the need for continuing compatibility between Federal and State regulatory programs. This concern was reflected in the compatibility standard set out in section 274 d.(2) and g. It should be noted that these provisions, which are set out below, refer to the compatibility of "programs."

> "d. The Commission shall enter into an agreement under subsection b. of this section with any State if---
>
> * * * * *
>
> "(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects 4/ compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.
>
> * * * * *
>
> "g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against

---

2/ See, JCAE report to accompany S.2568 (Sen. Rept. No. 870, September 1, 1959, 86th Cong., 1st Sess.) at pp. 4-5. The legislative developments which preceded enactment of Section 274 are summarized on pp. 4-8 of Sen. Rept. No. 870.

3/ Letter of August 26, 1959, JCAE hearings, supra note 1.

4/ The Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (92 Stat. 3021 at 3037) (1978), sec. 204(b), amended sec. 274d.(2) by inserting the words "in accordance with the requirements of subsection o. and in all other respects" before the word "compatible". Section 204(e)(1) of the Uranium Mill Tailings Radiation Control Act of 1978, which added new section 274o to the Atomic Energy Act of 1954, as amended, authorizes states to adopt standards ". . . for the protection of the public health, safety, and the environment from hazards associated with . . . [sec. 11e.(2) byproduct] material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, . . ."

hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible."

Section 274 was enacted into public law in the form in which it was unanimously reported out by the Joint Committee on Atomic Energy. As reported and enacted, the text of section 274d.(2) and 274g. was identical to the text of the original JCAE bill (introduced in the Senate on August 19, 1959 as S. 2568 and in the House on August 20, 1959 as H.R. 8755). The origins of the JCAE bill are explained in the following excerpt from the JCAE report (Sen. Report No. 870, September 1, 1959, 86th Congress, 1st Sess. at pp. 3 - 4) which accompanied S. 2568:

"This bill, including the minor amendments approved by the Joint Committee, contains the principal provisions of its predecessor, S. 1987, as proposed by the Atomic Energy Commission, and introduced by Senator Anderson (by request) on May 19, 1959. The objectives of the predecessor bill were explained by the letter dated May 13, 1959, to Chairman Anderson from A.R. Luedecke, General Manager of the AEC, as follows:

"'Essentially, the objectives of this proposed bill are to provide procedures and criteria whereby the Commission may 'turn over' to individual States, as they become ready, certain defined areas of regulatory jurisdiction. Certain areas, as to which interstate, national, or international considerations may be paramount, would be excluded. In addition, certain areas would be excluded because the technical safety considerations are of such complexity that it is not likely that any State would be prepared to deal with them during the foreseeable future.

"'To assist the States to prepare themselves for assuming independent regulatory jurisdiction, the new bill (like the 1957 bill) specifically authorizes the Commission to provide training and other services to State officials and employees and to enter into agreements with the States under which the latter may perform inspections and other functions cooperatively with the Commission.

"'The bill includes criteria which would need to be met before the Commission could turn over any of its responsibilities to a State; and provisions pursuant to which the Commission might reassert its authority. The bill provides that the Commission may, upon request of the Governor or upon its own initiative, terminate or suspend its agreement with the State and reassert its regulatory authority if the Commission finds that such termination or

suspension is required to protect public health and safety. Opportunity for hearing is provided.

"The bill also contains specific provisions designed to remove doubt as to the relative responsibilities of the Commission and the States * * *.'

"In summary, the principal provisions of the bill authorize the Commission to withdraw its responsibility for regulation of certain materials--principally radioisotopes--but not over more hazardous activities such as the licensing and regulation of reactors. The bill requires compatibility of Federal and State radiation standards, and authorizes programs to assist the States to assume independent regulatory jurisdiction.

"This bill, as amended by the Joint Committee, contains all the principal provisions, and is intended to accomplish the objectives of the bill proposed by the Commission. In addition, it contains certain revisions made by the Joint Committee as follows: [Note: no revisions were made to section 274d.(2) and g.]

* * * * *

"In summary, this bill provides the basic authorization requested by the Commission, and also incorporates certain additional features considered desirable by the committee, after hearings and careful consideration of all the provisions of the bill."

In the context of section 274, the term "compatible" is a word of art to be used as a guideline in reaching decisions with respect to the proper relationship, from the standpoint of substance and scope, between Federal and State radiation protection programs. The usefulness of the term "compatible" for this purpose is illustrated by the fact that the word connotes a range of circumstances or actions, starting at one end with actions which are clearly in conflict with and therefore incompatible with other actions, and concluding at the other end with actions that are identical to and are therefore compatible with other actions. Given this breadth of meaning, there is nothing in the term "compatible" per se which precludes the Commission, as a matter of legal power, from requiring Agreement States to adopt criteria which are identical to those promulgated by the Commission. This analysis, however, leaves unanswered a further question--when and under what circumstances should the Commission insist that State and Federal criteria be identical and when should variations which are not inconsistent be permitted.

It seems clear from the legislative history of section 274 that Congress intended the compatibility standard to be implemented in a manner that would assure that State and local radiation protection standards would be the same as Federal radiation protection standards. The following excerpts from Senate Report No. 870 on the amended version of S. 2568, the original JCAE bill, and

from the House 5/ debate of September 11, 1959, which preceded passage of the legislation are of particular interest.

Excerpts from Senate Report No. 870, to accompany S.2568, September 1, 1959, 86th Congress, 1st Session.

"Comments by the Joint Committee

* * * * *

"5. The Joint Committee believes it important to emphasize that the radiation standards adopted by States under the agreements of this bill should either be identical or compatible with those of the Federal Government. For this reason the committee removed the language 'to the extent feasible' in subsection g. of the original AEC bill considered at hearings from May 19 to 22, 1959. The committee recognizes the importance of the testimony before it by numerous witnesses of the dangers of conflicting, overlapping, and inconsistent standards in different jurisdictions, to the hindrance of industry and jeopardy of public safety.

"6. The bill establishes, in subsection h., a Federal Radiation Council to advise the President with respect to radiation matters. It is hoped that this Council will assist in obtaining uniformity of basic standards among Federal agencies, as well as in programs of conperation with States. . . .

* * * * *

"Section-by-Section Analysis

* * * * *

"Subsection d. provides for certification by the Governor, and a finding by the Commission, before any agreement may be entered into. It is intended to protect the public health and safety by assuring that the State program is adequate before the Commission may withdraw its regulatory responsibilities.

* * * * *

5/ A more extensive excerpt from the Senate debate of September 11, 1959 is provided in Enclosure A. This debate focused on the role of the Federal Radiation Council in the development and establishment of radiation protection standards.

"Subsection g. provides that the Commission is authorized and directed to cooperate with the States in the formulation of standards for the protection of public health and safety from radiation hazards and to assure that State and Commission programs for protection against radiation hazards will be coordinated and compatible. In most cases, it is intended that State and local standards should be the same as Federal standards in order to avoid conflict, duplication, or gaps."

Excerpt from House debate preceding passage of S. 2568, as reported, 105 Congressional Record, September 11, 1959, at pp. 17634, 17635.

Remark of Representative Price.

* * * * *

"In order to avoid overlapping, conflicting, or duplicating standards, the Joint Committee tightened up subsection g. of the bill relating to standards and provided that they should be compatible with the AEC standards. In most cases when a State assumes the responsibility, it is hoped that the State will adopt the AEC standards so that their standards will be identical.

"The bill also establishes a Federal Radiation Council consisting of five members, and such other members as shall be appointed by the President. This Council shall receive the advice of technical experts, and shall then advise the President. The President will then provide guidance to all Federal agencies in the formulation of radiation standards in order to encourage uniformity of standards at the Federal level, and thus subsequently at the State level.

* * * * *

"In summary, Mr. Speaker, the Joint Committee has considered this bill carefully, made certain revisions, and then reported out the bill unanimously. It has been passed by the Senate, and I urge all Members of the House to vote for S. 2568, in the form recommended by the Joint Committee on Atomic Energy."

The Commission has never formally defined "compatibility" or provided more than minimal guidance as to how the term "compatible" should be interpreted. However, from the earliest days of the State Agreements Program, the Commission has applied the compatibility standard both to program areas such as licensing and compliance and to regulations. Consistent with sections 274d.(2) and g., the basic objective has been to achieve uniformity among the various regulatory programs to the maximum extent practicable, recognizing that the States must be allowed some flexibility to accommodate local conditions.

With regard to regulations, it has been more or less understood that certain regulations, such as 10 CFR Part 20, are considered to be "matters of compatibility" and that States are required to have regulations that have essentially identical language. With respect to other parts of the regulations it has been less clear what requirements are considered "matters of compatibility" and why.

In 1961, the Commission published "Criteria for Guidance of States and AEC in Discontinuance of AEC Regulatory Authority and Assumption Thereof by States Through Agreement" (26 FR 2536-2539, March 24, 1961, see Enclosure B.) 6/ Among other things, the criteria require that:

> "2. Standards. The state regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.
>
> "3. Uniformity in radiation standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the AEC regulations based on officially approved radiation protection guides.
>
> "For the past 30 years, the National Committee on Radiation Protection and Measurements (NCRP) has been studying the entire area of permissible radiation dose, and during that time has made recommendations on the permissible radiation exposure. It has been the policy of the Atomic Energy Commission to follow recommendations of the NCRP. Since the establishment of the Federal Radiation Council in 1959, the AEC follows the recommendations of the Council, as approved by the President. The basic radiation exposure standards in 10 CFR Part 20, represent the legal acaption of these recommendations."
>
> * * * * *
>
> 6. Labels, signs, symbols. It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However it is essential that there be uniformity in labels, signs, and symbols

---

6/ These criteria were amended in November 1965 (30 FR 15044, December 4, 1965) to add a new criterion 28 relating to AEC contractors. Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and an organization change in NCRP.

affixed to radioactive products which are transferred from person to person.

* * * * *

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

* * * * *

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

* * * * *

On January 23, 1981 (46 FR 7540) the NRC published revised "Criteria" to "provide for entering into an agreement for a separate category of materials, namely low-level waste material in permanent disposal facilities . . . ." and to "provide new criteria [Criteria 29-36] for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. . . ." (46 FR 7541.) Criterion 29 and Criterion 5 which relates to waste disposal were further revised on July 16, 1981 (46 FR 36969) and July 21, 1983 (48 FR 33376) respectively. (The text of these revised criteria is provided in Enclosure C.)

The revised criteria made no change in the text of Criterion 2, the first paragraph of Criterion 3 other than to substitute "NRC" for "AEC" (the second paragraph of Criterion 3 was omitted in the 1981 revision), and Criterion 6. The only change made in the text of Criterion 12 was the insertion of the word "State" between the words "the" and "regulatory". The 1983 revisions to Criterion 9 were made to take into account the provisions of the Nuclear Waste Policy Act of 1982 and Commission's regulation, 10 CFR Part 61, which provides licensing procedures, performance objectives, technical requirements and financial assurance requirements for the issuance of NRC licenses for the land disposal of low-level radioactive waste. In the Federal Register notice announcing the revision, the Commission stated how Agreement States would be affected by this change.

"The Commission believes that States seeking an agreement pursuant to Section 274b of the Atomic Energy Act of 1954, as amended, to

regulate land disposal of radioactive waste should establish standards for disposal which are in accord with the applicable technical definitions, performance objectives, technical requirements, and financial assurance requirements of 10 CFR Part 61 and the waste transfer and manifest system prescribed in 10 CFR Part 20. For the waste manifest system to function effectively on a national basis, it is necessary for all licensees, both NRC and Agreement State, to follow the same system. Thus, the Agreement States are expected to adopt and implement this system for their licensees.

"Therefore, the NRC is revising Criterion 9 to include reference to the performance objectives, technical requirements and financial assurance requirements contained in Part 61 and the waste transfer and manifest system contained in Part 20. The revision also satisfies the provisions of the Nuclear Waste Policy Act of 1982. Criterion 9 will be used in judging the adequacy and compatibility of that aspect of a State's regulatory program for regulating land disposal of low-level radioactive waste. No additional revisions to the criteria are considered necessary at this time to enter into an agreement with a State which includes authority to regulate low-level radioactive waste disposal." 48 FR 33376-33377, July 21, 1983.

In order to better define compatibility and to eliminate uncertainty associated with making determinations concerning the degree to which State regulations must show uniformity with Commission regulations, the Agreement State program staff developed and adopted internal written procedures 7/ which categorized pertinent NRC rules according to the degree of uniformity necessary between NRC and Agreement State requirements. Noting that "[h]istorically, the notion of degrees of compatibility has always been implicit in compatibility determinations. . . ." the staff established the following four categories:

Division I Rules constitute those provisions of the NRC regulations that States are required to adopt, essentially verbatim, into their regulations. "These provisions include those that form the basic language of radiation protection essential for effective communication between regulatory agencies and the regulated community. These provisions have been formulated and agreed to by national and international organizations, from consensus standards followed by industry and government. They include technical definitions such as

---

7/ State Agreements Program, Division I, Internal Procedures, B. Policy, B.7 - Criteria for Compatibility Determinations, with attached Appendix A, Categorization of NRC Rules by Compatibility Type, January 25, 1984. A copy of this document is attached as Enclosure D.

'curie,' 'dose,' and 'rad,' radiation protection standards such as occupational exposure limits, effluent release limits, and legal definitions such as for 'byproduct material,' 'restricted area' and 'occupational dose.' These provisions are so basic to the regulatory programs that their modification by a State would result in numerous and difficult problems including interference in interstate commerce. . . ."

Division 2 Rules ". . . are other provisions in NRC regulations that address basic principles of radiation safety and regulatory functions. Such principles include generally applicable safety requirements such as personnel monitoring and ALARA, and procedural requirements such as detailed in Part 19. While States must address such principles in their regulations, the States may adopt requirements more restrictive than NRC rules. The use of language identical to that in NRC rules is not necessary provided the underlying principles are the same. For example, 10 CFR 19.11 addresses the posting of certain notices to workers. While we believe that it is important that Agreement State licensees be required to make available to workers certain documents, the manner, location and time constraints under which they are posted may differ somewhat from the corresponding NRC provisions. Local circumstances may dictate more stringent requirements than those of 19.11. Other rules that would be included in this category include basic procedural requirements necessary for licensing, inspection authority, incident reporting, and radiation safety requirements for industrial radiographers. . . ."

Division 3 Rules are those ". . . provisions in NRC regulations which would be appropriate for Agreement States to adopt, but which do not require any degree of uniformity between NRC and States rules. For example, NRC has found group medical licensing to be an improved method of licensing the medical uses of radionuclides. States utilizing a different procedure in licensing medical uses of radionuclides would not be hindering interstate commerce or deviating in any manner from basic radiation protection standards or procedures. Such rules, some of which relate to areas which are strictly matters between the regulatory agency and the regulated community within its jurisdiction are designated Division 3 rules. Such rules include administrative requirements as well as technical criteria which the agency feels the licensee must address in order to meet the basic radiation standards. In all cases, States are encouraged to adopt the regulatory approach taken by NRC in such rules, but are not required to do so."

Division 4 Rules are those rules pertaining to ". . . certain regulatory functions which are reserved to NRC pursuant to the Atomic Energy Act and 10 CFR Part 150. . . . Such rules include those concerning reactor regulation, distribution of consumer

products, exports and imports, and high level waste disposal. State regulations should not address these areas."

On the basis of this analysis, it is my view that the Commission has adequate legal authority under the compatibility standard in section 274d.(2) and g. of the Atomic Energy Act of 1954, as amended, to require Agreement States to adopt criteria that are identical to those promulgated by the NRC. It is also my view that insofar as these criteria relate to matters which fall within the scope of Division 1 Rules, as described on pp. 10-11, supra, Commission insistence that States adopt identical criteria would be considered to be a reasonable and proper exercise of this power. At the same time, however, I am also persuaded, for the reasons given below, that it would be inappropriate for the Commission to exercise that power with respect to NRC criteria expressed solely in the form of a policy statement.

As explained in the following excerpts from two U.S. Courts of Appeals opinions, it is well-established, as a doctrine of administrative law, that regulations promulgated by administrative agencies in accordance with the rule making procedures of the Administrative Procedure Act have the force and effect of law and are binding on the agency and on all those whom it regulates but that general statements of policy are not considered rules within the meaning of the Administrative Procedure Act and therefore do not establish binding enforceable norms. The differences between rules and policy statements are well summarized in the following excerpt from the opinion of the U.S. Court of Appeals for the D.C. Circuit in Pacific Gas and Electric Company v. Federal Power Commission, 506 F.2d 33 at pp. 38-39 (1974):

> "An administrative agency has available two methods for formulating policy that will have the force of law. An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents. A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. A general statement of policy, like a press release, presages an upcoming rulemaking or announces the course which the agency intends to follow in future adjudications....
>
> "The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. (Citations omitted.) A properly adopted substantive rule establishes a standard of conduct which has the force of law. In subsequent administrative proceedings involving a substantive rule, the issues are whether the adjudicated facts conform to the rule and whether the rule should be waived or applied in that particular instance. The underlying policy embodied in the rule is not generally subject to challenge before the agency.

"A general statement of policy, on the other hand, does not establish a 'binding norm.' It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy. A policy statement announces the agency's tentative intentions for the future. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy [footnotes omitted.]

The differences between rules and policy statements are further elucidated in the opinion of the U.S. Court of Appeals for the Third Circuit in Limerick Ecology Action, Inc. v. U.S. Nuclear Regulatory Commission, 869 F.2d 719, February 28, 1989, in which that Court, relying on Pacific Gas and Electric Co. v. Federal Power Commission, as precedent, held that the NRC could not exclude consideration of the environmental impact of severe accident mitigation design alternatives (SAMDAs) in individual licensing proceedings through the use of a policy statement 8/ instead of a rulemaking. The following lengthy excerpt from the Court's opinion (869 F.2d 719 at pp. 723, 732, 733, 734, 735-736, 739, and 741) is instructive:

"Although NEPA requires the Commission to undertake 'careful consideration,' Baltimore Gas, 462 U.S. at 98, 103 S.Ct. at 2253, of environmental consequences, under Baltimore Gas it may issue a rulemaking to address and evaluate environmental impacts that are 'generic', i.e., not plant-specific. We find in this case that (1) the SAMDAs were addressed through a policy statement, not a rulemaking, and that the policy statement does not represent the requisite careful consideration of the environmental consequences; and (2) the Commission did not find that such risks are remote and speculative and failed to give the requisite careful consideration to SAMDAs. Because the level of consideration given was legally inadequate, we will grant LEA's petition for review as to its first contention and remand the case to the NRC for consideration of severe accident mitigation design alternatives.

8/ NRC Final Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 FR 32138 (1985). Although the Commission issued this Final Policy Statement under the Atomic Energy Act, in the Limerick case, the Commission specifically applied the Statement to exclude environmental considerations under NEPA (869 F.2d 719 at 727, see, also, pp. 732, 733.)

* * * * *

". . . The Appeal Board upheld the exclusion of design mitigation alterratives, however, holding that the contention was precluded by the Final Policy Statement. (Citation omitted.)

"The Appeal Board explicitly relied on the Final Policy Statement's directive that 'severe accident mitigation measures, beyond already existing Commission requirements, "should not be addressed in case-related safety hearings."' . . . (quoting Final Policy Statement, 50 Fed. Reg. at 32,145). The Board noted that because the Final Policy Statement found that existing plants posed no undue risk to the public health and safety and that research was ongoing, the policy statement precluded review of design alternatives. . . . (Citation and footnote omitted.)

* * * * *

"In sum, the Appeal Board upheld the decision not to consider design alterratives on the grounds that the Policy Statement's conclusion that existing designs were sufficiently safe to exclude consideration of alternatives controlled its decision; that NEPA 'could not logically require more than the safety provisions of the Atomic Energy Act'; that ongoing studies were still considering design alternatives; and that the FES's consideration of severe accidents (although not of design alternatives) was sufficient.

"The NRC refused review, thus affirming the decision of the Appeal Board. In the order declining review, the Commission briefly stated that the Final Policy Statement was intended to address both NEPA and AEA reviews. . . .

* * * * *

"2. The Propriety of General Exclusion by the Final Policy Statement

"The parties do not dispute that the Appeal Board excluded consideration of design alternatives on the basis of the Final Policy Statement, and that the NRC's opinion affirmed on this ground. See 23 N.R.C. at 126. On appeal, LEA and the Commonwealth of Pennsylvania in its amicus brief acknowledge that after Baltimore Gas, the NRC may preclude consideration of generic issues by rulemaking. They contend, however, that because the Final Policy Statement was a 'policy statement' as opposed to a 'rule' and because it seeks to apply to all plants yet does not concern a generic issue, it does not have the force of a rulemaking and should not be permitted to exclude consideration of mitigation alterna-

tives. The distinction is important: courts have repeatedly held that if an agency action is merely a policy statement, '[w]hen the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.' Pacific Gas & Electric Co. v. Federal Power Commission, 506 F.2d 33, 37 (D.C. Cir. 1974). (Footnote omitted. Emphasis supplied.)

* * * * *

"The Final Policy Statement revised the Proposed Policy Statement, but on the issue of design alternatives for existing plants or those under construction, the NRC reiterated its refusal to consider such alternatives in individual licensing proceedings. Again, the NRC asserted that it was excluding such considerations on the basis of its 'policy statement,' and stated that it 'sees no present basis for immediate action on generic rulemaking [such as a rule requiring certain mitigation design alternatives] or other regulatory changes for these plants because of severe accident risk.' 50 Fed. Reg. at 32,138. Because the NRC has repeatedly characterized its exclusion of design alternatives as a policy statement, not a rulemaking, we must determine the impact of that determination on the validity of the exclusion in the case sub judice. (Footnote omitted.)

* * * * *

"Thus, although described as a policy statement, the NRC appears to have intended the Final Policy Statement to have the effect of a substantive rule, i.e., it appears that it was intended to be: (1) finally determinative as to the issue of design alternatives for Limerick; (2) not subject to challenge in the individual licensing proceeding; and (3) subjected to notice and comment procedures.

"Although the Final Policy Statement more closely approximates a substantive rule than a policy statement, the NRC asserts before this Court that it did not promulgate a binding rule:

> 'Because the policy statement was not promulgated by the Commission as a binding rule, petitioners were free (and arguably obliged) to challenge it when the Appeal Board applied the policy statement to affirm the Licensing Board's exclusion of their contention. Because the Commission does not argue that the policy statement was immune to challenge in individual licensing proceedings, as a rule would have been, the petitioners' various arguments that turn on the fact that the policy statement was not a rule are simply irrelevant.'

"NRC Br. at 33 n. 16.

"The NRC cannot have it both ways, however. (Emphasis supplied.) The Appeal Board decision and the subsequent order of the full Commission unequivocally indicated that the issue of mitigation design alternatives could not be challenged in the Limerick licensing proceeding. It is plain that, notwithstanding the Commission's protestation to the contrary in its brief, the Commission did, in fact, rely on the prior statement itself without examining the substantive arguments for considering design alternatives.

"We conclude that the Final Policy Statement here should not be accorded the stature of a rule. First, it was described as a policy statement by the NRC in the proposed and final Federal Register notices. An informed public interest group such as LEA, aware of the notice, and also (presumably) aware of the substantial precedent that policy statements cannot preclude consideration in individual licensing proceedings, might reasonably have been led to concentrate scarce resources on a challenge to a decision in a specific licensing proceeding such as this one rather than to a generic policy statement which, by definition, can have no binding effect. The NRC's assertion that the 'policy statement was not promulgated . . . as a binding rule' indicates in no uncertain terms the stature that the Commission accords the Final Policy Statement before this court. We cannot hold the public to a higher standard of divining the actual function of the Statement.

"Moreover, it is uncertain whether, even if LEA had sought judicial review of the Final Policy Statement at the time of its promulgation, review would have been permitted. General policy statements, because they are ineffective except as applied and defended in specific proceedings, are often insulated from judicial review at the time of issuance. See, e.g., Regular Common Carrier Conference v. United States, 628 F.2d 248, 252 (D.C. Cir. 1980). Although it is uncertain whether, because the Final Policy Statement sought to foreclose consideration of design alternatives in all proceedings, the statement could have been challenged in court at the time of its publication, a reviewing court might reasonably have concluded that because the NRC chose to proceed under the 'policy statement' rubric, it intended to defend the policy where challenged in licensing proceedings and hence a generic challenge would be 'premature.' National Association of Insurance Agents, Inc. v. Board of Governors, 489 F.2d 1268, 1271 (D.C. Cir. 1974).

"At all events, we need not decide whether the Final Policy Statement could have been challenged at time time of issuance because it is contrary to the intent of the APA to force the public to divine the obfuscated intention of the NRC. We conclude that the NRC's Final Policy Statement is entitled to no greater deference than any other policy statement, i.e., none. (Emphasis supplied.)

* * * * *

"To summarize, the policy statement was not a rulemaking and therefore did not absolve the NRC of the required consideration of environmental effects. We conclude that the FES failed adequately to consider SAMDAs and, therefore, the decisionmaker did not take the requisite 'hard look' at SAMDAs. We further conclude that a decision with respect to SAMDAs could affect the final decision and therefore preclusion of consideration of SAMDAs was inappropriate. Finally, on the record, the underlying issue of SAMDAs may not be treated as a generic issue and therefore summary treatment of SAMDAs was inappropriate.

* * * * *

"4. Summary

"We conclude that, contrary to the NRC's contention, simply meeting the requirements of the AEA does not exempt the Commission from complying with NEPA's procedural requirements. NEPA requires that the environmental impacts of agency action be given careful consideration and that the public be informed of them. Here, the NRC excluded consideration of design alternatives through a generic policy statement rather than through careful consideration. Because the action not to consider SAMDAs was promulgated as a policy statement, rather than a rule, and because it applies to an issue that we find is unlikely to be treated as generic, it does not meet the Baltimore Gas criteria for a generic rulemaking and therefore SAMDAs must be given careful consideration. Moreover, we are unwilling to conclude on the basis of the record before us, that, if the Commission had not excluded consideration of severe accident mitigation design alternatives on the basis of the Final Policy Statement, it would nevertheless have precluded their consideration on the ground that the underlying risks were remote and speculative. We therefore will grant the petition for review and remand for consideration of SAMDAs in light of this opinion. (Footnote omitted.)"

* * * * *

In accordance with these well-established legal principles, the Commission's BRC Policy Statement cannot be accorded the status of a rule under the Administrative Procedure Act. As a consequence, the criteria which it contains cannot be considered to be binding upon or enforceable either in Agreement States or against NRC licensees.

In conclusion, it is our view that while the Commission has adequate legal authority under the compatibility standard of the Atomic Energy Act of 1954, as amended, to require States to adopt identical criteria when those criteria

are set out in Commission rules, the Commission does not have authority under the compatibility standard to convert general statements of agency policy into enforceable regulatory requirements. To accomplish this goal, the Commission must follow either the rulemaking or adjudicatory procedures prescribed in the Administrative Procedure Act. As long as the criteria are stated only in the form of a policy statement, the Commission is precluded from exercising its legal authority under the compatibility standard of section 274 to require Agreement States to adopt BRC criteria that are identical to those set forth in the policy statement, i.e. Agreement State BRC criteria can be neither less stringent nor more stringent than the criteria established by the Commission.

William C. Parler
General Counsel

Enclosure A - Excerpt from Senate debate on S. 2568, September 11, 1959.
Enclosure B - "Criteria for Guidance of States and AEC in Discontinuance of AEC Regulatory Authority and Assumption Thereof by States Through Agreement," 26 FR 2536-2539, March 24, 1961.
Enclosure C - "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement," 46 FR 7540, January 23, 1981; "Revision of Criterion 29f," 46 FR 36969, July 16, 1981; "Revision of Criterion 9," 48 FR 33376, July 21, 1983.
Enclosure D - State Agreements Program, Division I, Internal Procedures, B. Policy, B.7 - Criteria for Compatibility Determinations, with attached Appendix A, Categorization of NRC Rules by Compatibility Type, January 25, 1984.

ENCLOSURE A

Enclosure A

Excerpts from Senate debate preceding passage of S. 2568, as reported, 105 Congressional Record, September 11, 1959, at pp. 17507, 17508, 17509, 17510.

Remarks of Senator Anderson.

* * * * *

"The Joint Committee amended this bill in certain respects to emphasize the importance of uniformity of standards at all levels of government and to establish by statute a Federal Radiation Council. . . ."

Colloquy between Senator Humphrey and Senator Anderson.

"Mr. Humphrey.

* * * * *

"As I understand, first, there is apparently nothing in the bill which vests authority in any specific agency for the establishment of radiation standards. There is likewise nothing in the President's Executive order which determines who is the responsible agent or which is the responsible agency in the matter of the establishment of radiation standards. At the present time the standards are recommended by a private nongovernmental group known as the National Committee on Radiation Protection and Measurement.

* * * * *

"During the past week at the first meeting of the Federal Radiation Council, it decided to continue to rely for standards on the private nongovernmental group known as the National Committee on Radiation Protection and Measurement.

* * * * *

"Under the Executive order and the bill, in what ways are the responsibilities of the Atomic Energy Commission changed and in what ways are the responsibilities of the Department of Health, Education and Welfare changed?

"Mr. Anderson. The responsibilities of the AEC are not changed under this bill until such time as the Commission may enter into an agreement with the Governor of a State, and at that time certain responsibilities now exercised by the Commission would be turned over from the Commission to qualified State governments, on a State by State basis.

"Responsibilities of the Department of Health, Education, and Welfare are not changed by this bill except that the Secretary of that Department is designated as a member of the Federal Radiation Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance by the President for all Federal agencies in the formulation of radiation standards and the establishment and execution of programs for cooperation with States. Therefore, the Department of Health, Education, and Welfare will have an active role in the formulation of standards and policies by the Council and in coordinating responsibilities at the Federal level and at the State level.

"Mr. Humphrey. While the Council, then, will not establish Federal radiation standards immediately, the Council will advise the President on these matters and will, through the cooperation of the Atomic Energy Commission and the Department of Health, Education, and Welfare, lay the groundwork for the establishment of such standards. Is that correct?

"Mr. Anderson. The Senator is correct. The President will establish policies, but the situation laid down by the Senator is correct.

"Mr. Humphrey. Does the Executive order or the bill deal with the question as to what agency, group, or person is responsible for setting radiation standards?

"Mr. Anderson. The bill provides that the Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance by the President for all Federal agencies in the formulation of radiation standards. Under the bill, as well as under the Executive order, the President shall have the final responsibility for establishing policies with respect to radiation standards. The President will receive his recommendations from the Council, which in turn, will receive advice from qualified technical experts.

* * * * *

"Mr. Humphrey. . . . Who is responsible for doing research and determining standards on the total ingestion of radioactive material into the human body?

"Mr. Anderson. Both the AEC and the Public Health Service will continue their research efforts into the nature of fallout and other radiation hazards and its effect on man. . . .

"As for the determination of standards, the President will have final responsibility for providing guidance to the agencies for the formulation of standards. The agencies would then establish operating standards under their respective statutory authorities following the guidance given by the President.

* * * * *

"Mr. Humphrey. . . .

". . . Since the Executive order designates the Secretary of the Department of Health, Education, and Welfare as Chairman of the Radiation Council to advise the President, does this mean that the President will designate the standards?

"Mr. Anderson. As I stated earlier, the President could designate the standards, or more probably the policies for the formulation of standards. Presumably, the Council will, with the best possible technical advice, adopt basic standards, and the various agencies will then adopt operating standards consistent with the basic standards."

Document Name:
JM-46-9-A

Requestor's ID:
SMERCAK

Author's Name:
Mapes

Document Comments:
Enclosure A

ENCLOSURE B

The [illegible] rate and charges as proposed [illegible] unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Date Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f)) on or before April 17, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, Secretary.

[F.R. Doc. 61-[illegible]; Filed, Mar. [illegible], 1961; [illegible] a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Filing of Plat of Survey and Order Providing for Opening of Lands

MARCH 17, 1961.

Plat of survey of the following described land accepted December [illegible], 1960, will be officially filed in the Land Office, Sacramento, California, effective at 10:00 a.m., on April 21, 1961:

MOUNT DIABLO MERIDIAN

T. 11 S., R. [illegible] E.

This plat represents a retracement and [illegible] of the east boundary (T. 11 S., R. [illegible] E.) and the north boundary (T. [illegible] S., R. [illegible] E.), together to restore the corners to their true original location according to the best available evidence, and the survey of a portion of the subdivisions of T. 11 S., R. [illegible] E.

Sec. [illegible].

The area described aggregates [illegible] acres of public land in the [illegible] National Forest.

The area may be generally described as rough, broken and mountainous. Elevations vary from 1,400 feet to 7,[illegible] feet. Patterson Bluffs trend northward from the southeast corner of T. 11 S., R. [illegible] E. There are numerous [illegible] streams and deep ravines in the area. The land is forested by yellow pine, sugar pine, red cedar, and white fir with black and live oak. The vegetation found on the brushy and undergrowth sites consists of manzanita, oak brush, tar bush, willow, dogwood, and wild cherry. Soil consists of rocky clay loam with bedrock frequently exposed. There are a few [illegible] air meadows. The area has no [illegible] potential and is valuable [illegible] for timber production, watershed [illegible] big game habitat.

Subject to any valid existing rights and the [illegible] requirements of applicable law the land [illegible] hereby opened to such applications [illegible] and locations as are permitted on national forest lands effective at 10:00 [illegible] on April 21, 1961.

[illegible] WALTER E. BACK, Manager, Land [illegible] Office, Sacramento.

[F.R. Doc. 61-[illegible]; Filed, Mar. [illegible], 1961; [illegible] a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-[illegible]]

OCEANIC STEAMSHIP CO.

Notice of Application and of Hearing

Notice is hereby given of the application of the Oceanic Steamship Company for written permission of the Maritime Administrator under section 805(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1223) to permit the Company's parent organization, Matson Navigation Company, to charter its owned C7-type ship, the "SS Hawaiian [illegible]", to Pope & Talbot, Inc., for operation in the Intercoastal Service for a period of from two to four months, such charter period to commence on or about April 1, 1961. This application may be inspected by interested parties in the Office of the Hearing Examiners, Federal Maritime Board, Maritime Administration, Washington, D.C.

A hearing on the application has been set for March [illegible], 1961, at 9:30 a.m. e.s.t., in Room 4419, General Accounting Office Building, 441 "G" Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on March [illegible], 1961, notify the Secretary, Federal Maritime Board, Maritime Administration, in writing, in triplicate, and file petition for leave to intervene which petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding [illegible] in Rule 5(n) of the rules of practice and procedure, Federal Maritime Board, Maritime Administration, petitions for leave to intervene received after the close of business on March [illegible], 1961, will not be granted in this proceeding.

Dated: March [illegible], 1961.

THOMAS LISI, Secretary.

[F.R. Doc. 61-[illegible]; Filed, Mar. [illegible], 1961; [illegible] a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. [illegible]]

BABCOCK & WILCOX CO.

Notice of Issuance of Amendment to Facility License

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Office of the Federal Register on March 3, 1961, the Atomic Energy Commission has issued Amendment No. 1 to Facility License No. CX-1[illegible]. The amendment authorizes The Babcock & Wilcox Company, as requested in its applications for license amendment dated December [illegible], 1960 and January 11, 1961, to modify its split-table critical facility located in Bay No. 3 in its Critical Experiment Laboratory located near Lynchburg, Virginia, for the conduct of exponential experiments using heavy water systems and to conduct such experiments at power levels not exceeding one kilowatt (thermal). The amendment also authorizes the possession and use of byproduct, special nuclear, and source material in connection with the facility.

Notice of the proposed action was published in the FEDERAL REGISTER on March [illegible], 1961, 26 F.R. [illegible].

Dated at Germantown, Md., this [illegible] day of March 1961.

For the Atomic Energy Commission.

R. L. KIRK, Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. [illegible]; Filed, Mar. [illegible], 1961; [illegible] a.m.]

BYPRODUCT, SOURCE AND SPECIAL NUCLEAR MATERIALS IN QUANTITIES NOT SUFFICIENT TO FORM A CRITICAL MASS

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

INTRODUCTION

1. Please take notice that the criteria set out herein were developed to implement a program authorized by Public Law 86-373 (73 Stat. [illegible]) which was [illegible]

noted to the term of a new section to the Atomic Energy Act of 1954, as amended (section 274) and approved by the President on September 23, 1959. Under the provisions of this Amendment, steps are to be effected the Commission will discontinue its regulatory authority within that State over any or all of the following materials: Byproduct material (radioisotopes); source material (uranium and thorium); and special nuclear material (Uranium 233, Uranium 235 and plutonium) in quantities not sufficient to form a critical mass.[1]

1. An agreement may be effected between a State and AEC (1) Upon certification by the governor that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and the State desires to assume regulatory responsibility for such materials; and (2) the AEC makes a finding that the State program is compatible with the Commission's program for the regulation of such materials and is adequate to protect the health and safety with respect to the materials covered by the proposed agreement.

2. After discussions with various State officials and other State representatives, the Atomic Energy Commission drafted proposed criteria to provide guidance and assistance to the States and the AEC in formulating a regulatory program which would be compatible with that of the AEC. The criteria were circulated among State, Federal agencies, labor and industry and other interested groups for comment.

3. On August 22 and 23, 1962 the Commission's Advisory Committee of State Officials met in Washington, D.C., at which time the members expressed their views with respect to the proposed criteria and evaluated the comments which had been received as of that date. The proposed criteria were rewritten after full consideration of the Committee's recommendations and comments received subsequent to the meeting.

4. The criteria require that the State authority consider the total cumulative occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the AEC that an overall radiation protection program is desirable. The maximum scope of any State's radiation protection program is one, however, is necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the AEC under the Atomic Energy Act, such as X-ray, radium, accelerators, etc.

5. Inquiries about details of the criteria or other aspects of the AEC's Federal-State Relations Program should be addressed to the State-AEC Relations Branch of the Office of State and Licensee U.S. Atomic Energy Commission, Washington 25, D.C.

Criteria

1. *Protection Organization.* A State regulatory program shall be organized to protect the health and safety of the people against radiation hazards therein encompassing the occupational uses of radiation.

Radiation Protection Standards[2]

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities sufficient to form a critical mass.

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

For the past 30 years, the National Committee on Radiation Protection and Measurements (NCRP) has been studying the nature and of permissible radiation dose and during that time has made recommendations on the permissible radiation exposure. It has been the policy of the Atomic Energy Commission to follow recommendations of the NCRP. Since the establishment of the Federal Radiation Council in 1959, the AEC has been the recommendations of the Council, as approved by the President. The basic radiation exposure standards in 10 CFR Part 20 represent the legal adaptation of these recommendations.

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

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

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

7. *Instruction.* Persons working in or frequenting controlled areas[3] shall be instructed with respect to the hazards of exposure to radioactive materials and in precautions to minimize exposure.

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

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

10. *Regulations governing shipment of radioactive materials.* The State shall be the extent of its jurisdiction practicable regulations applicable to the shipment of radioactive materials. Such regulations to be compatible with those established by the Federal Government (AEC, Interstate Commerce Commission, Federal Aviation Agency, Treasury Department (Coast Guard), and Post Office) whose jurisdictions over interstate shipment of such materials necessarily overlaps.

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

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

Prior Examination of Uses of Radioactive Materials

13. *Prior evaluation of hazards and uses exceptions.* In the present state of knowledge, it is necessary to require that the possession and use of byproduct, source and special nuclear materials and the regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to the receipt of the materials. This criterion is subject to certain exceptions and to accepting re-approval as knowledge and experience in the various areas fold increase. Presently there are 5 or 6 categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups—

---

[1] A summary of the Commission's regulatory program covering these materials is available upon request.

[2] Proposed more restrictive and more extensive will give consideration to all criteria subsequently.

[3] "Controlled area" means any area access to which is controlled by the licensee for purposes of radiation protection. "Controlled area" shall not include any area used as residential quarters although a separate room or rooms in a residential building may be set apart as a controlled area.

those materials and uses which may be completely exempt from regulatory controls and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14 *Evaluation criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls.

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

Inspection

16 *Purpose, frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

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

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

Enforcement

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

Personnel

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

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

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

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

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

Special Nuclear Material

21 *Conditions applicable to special nuclear material.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials owned by the AEC, for example, the duty to report to the AEC, on AEC prescribed forms (1) transfers of special nuclear material, and (2) periodic inventory data.

22 *Special nuclear material defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U 235 in quantities not exceeding 350 grams of contained U 235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and is within the formula, as follows:

$$\frac{175 \text{ (grams contained U 235)}}{[illegible]} + \frac{50 \text{ (grams U 233)}}{[illegible]} + \frac{50 \text{ (grams Pu)}}{[illegible]} = 1$$

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

Administration

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

a. Formulation of rules of general applicability;

b. Approving or denying applications for licenses or authorizations to possess and use radioactive materials; and

c. Taking disciplinary actions against licensees.

Arrangement for Discontinuance AEC Jurisdiction

24 *State agency designation.* The State should indicate which agency or agencies will have authority for carrying on the program and a summary of the

local authority. There should be consultation between Commission regulations and licensing by state and local authorities, and it may be determined that there is a conflict or overlap requiring arbitration.

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

(4) Assistance from Federal personnel and other states. There should be an understanding of Federal and state information and assistance in accordance with the acceptance of regulations and licenses or authorities, inspection of licensees, reporting of incidents and radiations and training and advisory services.

(5) Coverage, continuing responsibility. An agreement providing for discontinuance of AEC regulatory authority and the assumption thereof by the state shall relate to any one or more of the following categories of materials within the state as contemplated by Public Law 86-373:

a. Byproduct materials,
b. Source materials
c. Special nuclear materials in quantities not sufficient to form a critical mass;

but must relate to the whole of each category or categories and not be a part of any category. It is clear that the three categories are included in any discontinuance of jurisdiction, discontinuance of AEC regulatory authority and the assumption thereof by the state of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Public Law 86-373 and the related provisions of the Atomic Energy Act.

Arrangements should be made for the reciprocal recognition of state licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a state or Federal licensee.

For the Atomic Energy Commission.

Dated at Germantown, Md., this 21st day of March 1971.

Wilfrid E. McCool,
Secretary.

(F.R. Doc. 71-3827 Filed, Mar. 25, 1971; 8:45 a.m.)

No. 8——6

CIVIL AERONAUTICS BOARD

[Docket 19811]

PAKISTAN INTERNATIONAL AIRLINES CORP.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference is assigned to be held on the above-entitled application on March 30, 1971, at 10:00 a.m. e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Richard Walsh.

Dated at Washington, D.C., March 21, 1971.

(SEAL) Francis W. Brown,
Chief Examiner.

(F.R. Doc. 71-3828, Filed, Mar. 25, 1971; 8:45 a.m.)

[Docket 19809]

BIDDLE AIRLINES, INC., AND AEROVIAS SUD AMERICANAS, INC.

Notice of Prehearing Conference

In the matter of the application of Biddle Airlines, Inc. and Aerovias Sud Americanas, Inc. under section 408 and such other sections of the Federal Aviation Act of 1958 as amended, as may be applicable for approval of the merger of Aerovias Sud Americanas, Inc. into Biddle Airlines, Inc.

Notice is hereby given that a prehearing conference is assigned to be held on the above-entitled matter at 10:00 a.m., e.s.t., in Room 711, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., on March 30, 1971, before Examiner James S. Keith.

Dated at Washington, D.C., March 21, 1971.

(SEAL) Francis W. Brown,
Chief Examiner.

(F.R. Doc. 71-3829, Filed, Mar. 25, 1971; 8:45 a.m.)

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 19291-19292; FCC 71R-98]

ALTUS BROADCASTING CO. (KWKW) ET AL.

Order Scheduling Hearing

In re applications of The Altus Broadcasting Company (KWKW), Altus, Oklahoma, Docket No. 19291, File No. BP-18519; Charles L. Cain, El Reno, Oklahoma, Docket No. 19292, File No. BP-18541; KWFF Broadcasting Company, Incorporated (KWFF), Guthrie, Oklahoma, Docket No. 19293, File No. BP-18548; Plains Broadcast Company, Inc. (KVOX), Portales, New Mexico, Docket No. 19294, File No. BP-18555; Woodward Broadcasting Company (KIRV), Woodward, Oklahoma, Docket No. 19271, File No. BP-18520; Angelo Broadcasting Company (KGKL), Angelo, Texas, Docket No. 19272, File No. BP-18548; for construction permits.

The Hearing Examiner having under consideration his order released January 21, 1971, postponing indefinitely the then scheduled date of January 28, 1971, for commencement of hearing in order to allow the applicants an opportunity to prepare a joint petition for reconsideration and grant of all applications addressed to the Commission, grant of which would eliminate the necessity for hearing; and

It appearing that counsel for the applicants in this proceeding have advised the Hearing Examiner that in view of the Commission's recent memorandum Opinion and Order released February 17, 1971, in re Marshalltown Broadcasting Company (WTPM), 21 R.R. 2d 1, hearing in the instant case will be required, and that the Hearing Examiner feels it appropriate to proceed with the hearing; and

It is ordered, This 19th day of March 1971, on the Hearing Examiner's own motion, that the hearing in this proceeding shall be commenced at 10 a.m., March 31, 1971.

Released: March 19, 1971.

Federal Communications Commission,
(SEAL) Ben F. Waple,
Acting Secretary.

(F.R. Doc. 71-3830, Filed, Mar. 25, 1971; 8:47 a.m.)

[Docket No. 19771; FCC 71R-97]

COLUMBIA RIVER BROADCASTERS, INC.

Order Continuing Hearing

In re application of Columbia River Broadcasters, Inc., Mount Vernon, Washington, Docket No. 19771, File No. BP-19931; for construction permits.

The Hearing Examiner having under consideration a "Petition for Continuance" filed March 16, 1971, by Columbia River Broadcasters, Inc., in the above-entitled matter; and

It appearing, that the Petition requests that the hearing now scheduled for March 31, 1971, be continued until April 27, 1971; and

It further appearing that a continuance until April 27, 1971, would conflict with the Hearing Examiner's schedule; and

It further appearing that good cause for a continuance of the hearing has nevertheless been shown; and

It further appearing that all parties to the proceeding have agreed to a continuance.

It is ordered, This 19th day of March 1971, that the aforesaid Petition for Continuance is granted insofar as it requests a continuance of the now scheduled hearing but is denied insofar as it proposes a hearing until the specific date, April 27, 1971; and

It is further ordered, That accordingly, the hearing in this matter be and is hereby is continued until 10:00 a.m.,

[redacted]

ENCLOSURE C

COMMISSION NOTICES
POLICY STATEMENTS

AGREEMENT STATES

46 FR 7540
Published 1/23/81
Effective 1/23/81

Amended by PS published 7/16/81 (46 FR 36969) and 7/21/83 (48 FR 33376)

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

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Statement of Policy.

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

The revised statement of policy reflects the following principal changes:

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

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

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

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

FOR FURTHER INFORMATION CONTACT: John F. Kendig, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7787.

SUPPLEMENTARY INFORMATION:

1. These criteria were developed to implement a program authorized by Pub. L. 86-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by the President on September 23, 1959 and amended by Pub. L. 95-604 approved November [illegible] 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

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

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

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

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

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

Criteria [1]

Objectives

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

Radiation Protection Standards [2]

[1] The criteria were first adopted in February 1961 (26 FR 2537, March 24, 1961) and amended in November 1962 (27 FR 11504, December 4, 1962). Minor editorial changes were made in June 1968 to reflect the authority of the U.S. Department of Transportation and Organization changes in NRC.

[2] Suggested State regulations and State legislation will give content to all criteria enumerated.

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

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

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

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

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

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

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

9. Radioactive Waste Disposal.

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

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

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

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

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

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

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

Prior Evaluation of Uses of Radioactive Materials

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

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

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

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining,

*"Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to ensure compliance.

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

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

Enforcement

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

Personnel

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

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

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

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

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

Special Nuclear Material, Source Material and Tritium

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

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235, uranium 233 in quantities not exceeding 200 grams, plutonium in quantities not exceeding 200 grams, or any combination of them in accordance with the following formula. For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

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

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

Administration

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

a. Formulation of rules of general applicability;

b. Approving or denying applications for licenses or authorization to possess and use radioactive materials; and

c. Taking disciplinary actions against licensees.

Arrangements For Discontinuing NRC Jurisdiction

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

25. *Existing NRC Licenses and Pending Applications.* In effecting the

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

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

27. *Coverage, Amendments, Reciprocity.* An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 83-604:

a. Byproduct materials as defined in section 11e(1) of the Act.

b. Byproduct materials as defined in section 11e(2) of the Act.

c. Source materials.

d. Special nuclear materials in quantities not sufficient to form a critical mass.

e. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act,

but must relate to the whole of such category or categories and not to a part of any category.* If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 83-604 and the related provisions of the Atomic Energy Act.

Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensee.

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

a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;

b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;

c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and

d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

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

Statutes

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

a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.

c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the reclamation or other bonded activity has been performed, funds for the purpose are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161.i. of the Atomic Energy Act.

d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.

e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.

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

g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

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

a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.

b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.

c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e.(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.

d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.

e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.

f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

31. It is preferable that State statutes contain the provisions of Section 8 of the Model Act. But the following may be accomplished by adoption of either procedures by regulation or technical

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

criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:*

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licensed activities (see Item 38b.(1)).

Regulations

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

Organizational Relationships Within the States

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

a. Charts should be developed which show the management organization and lines of authority. This chart should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of uranium processing and disposal of tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between the agencies and/or regions and the Program Director should be clearly drawn.

b. Those States that will utilize personnel from other State Departments or Federal agencies in preparing the environmental assessment should designate a lead agency for supervising and coordinating preparation of this environmental assessment. It is normally expected that the radiation control agency in Agreement States will be the lead agency. The basic premise is that the lead agency is required to prepare the environmental assessment. Utilization of an applicant's environmental report in lieu of a lead agency assessment of the proposed project is not adequate or appropriate. However, the lead agency may prepare an environmental assessment based upon an applicant's environmental report. Other credible information may be utilized by the State as long as such information is verified and documented by the State.

c. When a lead agency is designated that agency should coordinate preparation of the statement. The other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. Factors relevant in obtaining assistance from other agencies include the applicable statutory authority, the time sequence in which the agencies become involved, the magnitude of their involvement, and relative expertise with respect to the project's environmental effects.

In order to bring an environmental assessment to a satisfactory conclusion, it is highly recommended that an initial scoping document be developed which clearly delineates the area and scope of work to be performed by each agency within a given time constraint.

d. For those areas in the environmental assessment where the State cannot identify a State agency having sufficient expertise to adequately evaluate the proposal or prepare an assessment, the State should have provisions for obtaining outside consulting services. In those instances where non-governmental consultants are utilized, procedures should be established to avoid conflict of interest consistent with State law and administrative procedures.

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

During the budget preparation, the State should allow for funding costs incurred by the use of consultants. In addition, consultants should be available for any emergencies which may occur and for which their expertise would be needed immediately.

Personnel

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

a. Administrative personnel are those persons who will provide internal guidance, policy memoranda, reviews and managerial services necessary to assure completion of the licensing action. Support personnel are those persons who provide secretarial, clerical support, legal, and laboratory services. Technical personnel are those individuals who have the training and experience in radiation protection necessary to evaluate the engineering and radiological safety aspects of a uranium concentrator. Current indications are that 2 to 2.75 total professional person years' effort is needed to process a new conventional mill license, in situ license, or major renewal, to meet the requirements of UMTRCA. This number includes the effort for the environmental assessment and the in-plant safety review. It also includes the use of consultants. Heap leach applications may take less time and is expected to take 1.0 to 1.5 professional staff years' effort, depending on the circumstances encountered. Current indications are that the person years effort for support and legal services should be one secretary for approximately 2 conventional mills and ¼ staff years for legal services for each noncontested mill case. The impact on environmental monitoring laboratory support services is difficult to estimate but should be added into the personnel requirements.

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

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

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

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

Functions To Be Covered

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

a. *Licensing*

(1) Licensing evaluations or

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

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

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

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

b. *Environmental Assessment*

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

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

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:

(a) Ecology;
(b) Environmental effects of site preparation and facility construction on environment and biota;
(c) Environmental effects of use and discharge of chemicals and fuels; and
(d) Economic and social effects.

c. *Inspections*

(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in-plant safety review. The principal items recommended for inspection are:

(a) Administration;
(b) Mill circuit, including any additions, deletions, or circuit changes;
(c) Accidents/incidents;
(d) Part 19 or equivalent requirements of the State;
(e) Action taken on previous findings;
(f) A mill tour to determine compliance with regulations, and license conditions;
(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);
(h) Records;
(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20;
(j) Effluent and environmental monitoring;
(k) Training programs;
(l) Transportation and shipping;
(m) Internal review and audit by management;
(n) Exit interview; and
(o) Final written report documenting the results of the inspection and findings on each item.

(2) In addition, the inspector should perform the following:

(a) Independent surveys and sampling.

(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A *complete* inspection should be performed at least once per year.

d. *Operational Data Review*

(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.

(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

Instrumentation

36 The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

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

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

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

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

ENCLOSURE D

STATE AGREEMENTS PROGRAM
DIVISION I

Internal Procedures

B. Policy

B.7 - Criteria for Compatibility Determinations

I. Background

Section 274d.(2) of the Atomic Energy Act of 1954, as amended, requires that before entering into an agreement with any State, the Commission shall make a determination that the State's program is compatible with the Commission's program. Section 274g. authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission programs will be coordinated and compatible. Section 274j(1) requires that the Commission periodically review such agreements and actions taken under the agreements to ensure compliance with Section 274. Sections 274d(2) and 274g. are the only sections of the Act that address the concept of compatibility. It should be noted that both sections refer to the compatibility of "programs." It is evident that Congress intended that the Commission address more than just regulations in its review, and since the earliest days of the State Agreements Program the Commission has used the term "compatibility" in relation to not only regulations, but also to such program areas as licensing and compliance. This procedure, however, will address compatibility only as it affects regulations.

The Commission has never formally defined compatibility or provided more than minimal guidance as to how the term should be interpreted. The basic objective has been to achieve uniformity among the various regulatory programs to the maximum extent practicable recognizing that the States must be allowed some flexibility to accommodate local conditions. With regard to regulations, it has been more or less understood that certain regulations such as 10 CFR Part 20 were considered to be "matters of compatibility" and that States were required to have regulations that had essentially identical language. With respect to other parts of the regulations it was less clear what requirements were considered "matters of compatibility" and why. In 1961, the Commission published criteria for the guidance of States and the Commission relating to the discontinuance of Commission authority under the terms of the agreement. The criteria require that "The State regulatory program shall adopt a set of standards for protection against radiation... It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the [Commission] regulations based on officially approved radiation protection guides." However, questions remain as to how precisely State regulations must reflect NRC regulations.

In addition, NRC has always encouraged uniformity in regulations other than those listed above, but no specific guidance has been provided.

It should be noted that the Uranium Mill Tailings Radiation Control Act and the Nuclear Waste Policy Act require Agreement States as well as NRC to incorporate certain elements in their regulatory programs (e.g., environmental assessments, land ownership, financial assurances). These requirements have been appropriately included in the categorization.

In light of the above, this procedure establishes criteria for better defining compatibility and determining the degree to which States regulations must show uniformity with Commission regulations.

II. Rule Categorization

Historically, the notion of degrees of compatibility has always been implicit in compatibility determinations. This notion, however, has never been given substance in the form of policies or procedures. Under this procedure pertinent NRC rules are categorized according to the degree of uniformity necessary between NRC and Agreement State requirements. Four categories are established as follows:

Division 1 Rules

There are certain provisions in NRC regulations that States must adopt, essentially verbatim, into their regulations. These provisions include those that form the basic language of radiation protection essential for effective communication between regulatory agencies and the regulated community. These provisions have been formulated and agreed to by national and international organizations, from consensus standards followed by industry and government. They include technical definitions such as "curie," "dose," and "rad," radiation protection standards such as occupational exposure limits, effluent release limits, and legal definitions such as for "byproduct material," "restricted area" and "occupational dose." These provisions are so basic to the regulatory programs that their modification by a State would result in numerous and difficult problems including interference in interstate commerce. These provisions are collectively referred to as Division 1 rules and Agreement States are required to adopt essentially identical provisions.

Division 2 Rules

There are other provisions in NRC regulations that address basic principles of radiation safety and regulatory functions. Such principles include generally applicable safety requirements such as personnel monitoring and ALARA, and procedural requirements such as detailed in Part 19. While States must address such principles in their regulations, the States may adopt requirements more

restrictive than NRC rules. The use of language identical to that in NRC rules is not necessary provided the underlying principles are the same. For example, 10 CFR 19.11 addresses the posting of certain notices to workers. While we believe that it is important that Agreement State licensees be required to make available to workers certain documents, the manner, location and time constraints under which they are posted may differ somewhat from the corresponding NRC provisions. Local circumstances may dictate more stringent requirements than those of 19.11. Other rules that would be included in this category include basic procedural requirements necessary for licensing, inspection authority, incident reporting, and radiation safety requirements for industrial radiographers. Such provisions are designated Division 2 rules.

Division 3 Rules

There are a great number of provisions in NRC regulations which would be appropriate for Agreement States to adopt, but which do not require any degree of uniformity between NRC and States rules. For example, NRC has found group medical licensing to be an improved method of licensing the medical uses of radionuclides. States utilizing a different procedure in licensing medical uses of radionuclides would not be hindering interstate commerce or deviating in any manner from basic radiation protection standards or procedures. Such rules, some of which relate to areas which are strictly matters between the regulatory agency and the regulated community within its jurisdiction are designated Division 3 rules. Such rules include administrative requirements as well as technical criteria which the agency feels the licensee must address in order to meet the basic radiation standards. In all cases, States are encouraged to adopt the regulatory approach taken by NRC in such rules, but are not required to do so.

Division 4 Rules

There are certain regulatory functions which are reserved to NRC pursuant to the Atomic Energy Act and 10 CFR Part 150. Rules pertaining to these areas are designated Division 4 rules. Such rules include those concerning reactor regulation, distribution of consumer products, exports and imports, and high level waste disposal. State regulations should not address these areas.

III. Listing of Pertinent NRC Rules

Attached as Appendix A of this procedure is a listing of all pertinent NRC rules (Parts 19, 20, 30, 31, 32, 33, 34, 35, 40, 61, 70, 71, and 150) by compatibility type. The corresponding section of the Suggested State Regulations can be found in Internal Procedure A.2.

APPENDIX A

CATEGORIZATION OF NRC RULES BY COMPATIBILITY TYPE

Division 1 Rules

19.3	Definitions (Exceptions - Act, Commission, license)
20.3	Definitions (Exceptions - Act, Commission, Gov't Agency, license)
20.4	Units of radiation dose
20.5	Units of radioactivity
20.101	Dose limits
20.102	Prior dose
20.103	Concentrations in restricted areas
20.104	Exposure of minors
20.105	Levels in unrestricted areas
20.106	Radioactivity in effluents
20.203	Caution signs, etc., except (c)(6)&(7)
20.403	Notifications of Incidents
Part 20	Appendix B and Appendix C
30.4	Definitions (Exceptions - Act, Commission, Gov't Agency, license, production facility, utilization facility)
30.11	Specific exemptions
30.12	Contractor exemptions
30.14	Exempt concentration
30.15	Exempt items
30.16	Sc-46 resins exemption
30.18	Exempt quantities
30.19	Self-luminous products
30.20	Gas and aerosol detectors
30.70	Exempt concentrations schedule
30.71	Exempt quantities schedule
31.3	Certain devices and equipment
32.2	Definitions
40.4	Definitions (Exceptions - Act, Commission, Gov't Agency, Pharmacist, physician)
40.11	DOE & NRC contractor exemptions
40.13	Unimportant quantities
40.14	Specific exemptions
40.22	Small quantities of source material
61.2	Definitions (Exceptions - Commission, Director, Gov't Agency)
61.41	Protection of general population
61.55	Waste classification
70.4	Definitions (Exceptions - Act,Atomic Weapon, Commission, Common defense and security, Gov't Agency)
70.11	DOE & NRC contractor exemptions
70.14	Specific exemptions
71.4	Definitions (those relating to materials transportation)
71.5	Transportation of licensed material
71.10	Exemptions for low-level materials

1/25/84

Part 71	Appendix A
150.3	Definitions (b), (c), (g), (i), and (j)
150.11	Critical mass
150.20	Reciprocity

Division 2 Rules

19.11	Posting of Notices
19.12	Instructions to Workers
19.13	Notifications
19.14	Presence of worker representatives
19.15	Consultation with workers
19.16	Requests for inspection
19.17	Inspection not warranted
20.1(c)	ALARA
20.108	Bioassay Services
20.201	Surveys
20.202	Personnel Monitoring
20.203	(c)(6) and (7) 500 rem/hr rule
20.205	Picking up, receiving, and opening packages
20.207	Storage & control in unrestricted areas
20.301	Waste Disposal - General Requirements
20.302	Approval of disposal procedures
20.303	Sewage disposal
20.311	Transfer for disposal
20.402	Reports of Theft or loss
20.405	Reports of overexposures
20.408	Monitoring Reports on termination
Part 20	Appendix A
30.3	Activities requiring license
30.13	Carrier Exemption
30.31	Types of Licenses
30.32	Application for specific license
30.33	General requirements
30.34	Terms & Conditions
30.41	Transfer of byproduct material
30.55	Tritium reports (to be deleted)
31.5	Certain measuring, gauging and controlling devices
31.6	Installation of GL gauges
31.7	Luminous safety devices for use in aircraft
32.11	Introduction of exempt concentrations
32.12	Material transfer reports
32.13	Prohibition of introduction
32.51	Manufacture of GL gauges
32.51a	Manufacture of GL gauges
32.52	Transfer reports - GL gauges
32.53	Manufacture of luminous safety devices
32.54	Labeling of luminous safety devices
32.55	QA - luminous safety devices
32.56	Transfer reports - luminous safety devices
32.57	Manufacture of Am-241 reference sources
32.58	Labeling of Am-241 sources
32.59	Leak testing of Am-241 sources
32.61	Manufacture of Sr-90 ice detection devices

1/25/84

32.62	QA - ice detection devices
32.70	Manufacture of Medical GL material
32.71	Manufacture of in vitro kits
32.72	Manufacture of radiopharmaceuticals
32.73	Manufacture of generators and reagent kits
32.74	Manufacture of sources for medical use
32.101	Schedule B - tests for luminous safety devices
32.102	Schedule C - tests for Am-241 sources
32.103	Schedule D - tests for Sr-90 ice detection devices
32.110	Sampling procedures
34.2	Definition
34.11	Specific licenses for radiography
34.21	Levels of radiation
34.22	Locking of devices
34.23	Storage precautions
34.24	Survey Instruments
34.25	Leak testing, etc.
34.26	Quarterly inventory
34.27	Utilization logs
34.28	Inspection and maintenance
34.31	Training
34.32	Operating and emergency procedures
34.33	Personnel Monitoring
34.41	Security
34.43	Surveys
Part 34	Appendix A
40.2a	Inactive tailings sites
40.12	Carrier exemptions
40.20	Types of licenses
40.26	GL - possession & storage of tailings
40.31(f) & (h)	License for source material milling
40.32	General requirements
40.34	Manufacture of depleted uranium products for GL
40.35	Manufacture of depleted uranium products for GL
40.41	Terms and Conditions
40.51	Transfer of source material
40.65	Effluent monitoring
Part 40	Appendix A
61.3	License required
61.10	Content of application
61.11	General information
61.12	Specific Technical information
61.13	Technical analyses
61.14	Institutional information
61.15	Financial information
61.23	Standards for issuance
61.24	Conditions of licenses
61.27	Application for renewal or closure
61.28	Contents of application for closure
61.29	Post-closure observation
61.30	Transfer
61.31	Termination
61.40	General requirement

61.42	Protection of individuals from intrusion
61.43	Protection of individuals during operations
61.44	Stability of site after closure
61.50	Site suitability requirements
61.51	Site design
61.52	Facility operation and site closure
61.53	Environmental monitoring
61.54	Alternative requirements
61.56	Waste characteristics
61.57	Labeling
61.59	Institutional requirements
61.61	Applicant qualifications
61.62	Funding for closure and stabilization
61.63	Financial assurances
61.81	Tests at disposal facilities
61.82	Commission inspections
70.12	Carrier exemption
70.18	Types of licenses
70.23(a)	Requirements for approval
70.39	Manufacture of Pu calibration sources
70.42	Transfer of SNM
71.12	GL for NRC approved packages
71.13	Previously approved Type B packages
71.14	GL: DOT containers
71.16	GL: foreign approved packages
71.81	Operating controls and procedures
71.85	Preliminary determinations
71.87	Routine determinations (except fissile related)
71.88	Air transport of Pu
71.89	Opening instructions
150.31	UMTRCA
150.32	UMTRCA

Division 3 Rules

19.1	Purpose
19.2	Scope
19.4	Interpretations
19.5	Communications
19.20	Employee protection
19.30	Violations
19.31	Applications for exemptions
19.32	Discrimination prohibited
20.1	(a) & (b) Purpose
20.2	Scope
20.6	Interpretations
20.7	Communications
20.107	Medical diagnosis & therapy
20.204	Posting exceptions
20.206	Instruction of personnel
20.305	Disposal by incineration
20.306	Biomedical waste rule
20.401	Records

1/25/84

20.407	Personnel Monitoring reports
20.409	Notifications and Reports to Individuals
20.501	Applications for exemptions
20.502	Additional Requirements
20.601	Violations
30.1	Purpose & Scope
30.2	Resolution of conflict
30.5	Interpretations
30.6	Communications
30.7	Employee protection
30.36	Expiration of licenses
30.37	Applications for renewal
30.38	Applications for amendment
30.39	Commission Action to renew or amend
30.51	Records
30.52	Inspections
30.53	Tests
30.61	Modification and revocation of licenses
30.62	Withholding of byproduct material
30.63	Violations
31.1	Purpose and Scope
31.2	Terms and conditions
31.8	Am-241 reference sources
31.9	GL to own material
31.10	Sr-90 ice detection devices
31.11	In-vitro GL
32.1	Purpose and scope
33.1	Purpose and scope
33.11	Broad license requirements
33.12	Broad license requirements
33.13	Broad license requirements
33.14	Broad license requirements
33.15	Broad license requirements
33.16	Broad license requirements
33.17	Broad license requirements
33.100	Schedule A
34.1	Purpose and scope
34.3	Applications for specific licenses
34.29	Permanent radiographic installations
34.42	Posting
34.44	Supervision of radiographer's assistants
34.51	Applications for exemptions
35.1	Purpose and scope
35.2	Medical license requirement
35.3(a)	Definition of "Human Use"
35.3(b)	Definition of "physician"
35.4	Application form
35.11	Licenses for human use
35.12	Licenses for individual physician's
35.13	Human use of sources
35.14	Group medical licensing
35.21	Teletherapy calibrations
35.22	Teletherapy spot-checks
35.23	Instrument calibration

35.24	Qualified expert
35.25	Teletherapy room monitor
35.26	5-year inspection and servicing
35.27	Records
35.31	Medical GL
35.41	Misadministration reporting
35.42	Misadministration reporting
35.43	Misadministration reporting
35.44	Misadministration reporting
35.45	Misadministration reporting
35.100	Medical Groups
40.1	Purpose
40.2	Scope
40.3	License requirements
40.5	Communications
40.6	Interpretations
40.7	Employee protection
40.21	GL- title to source material
40.25	GL- depleted uranium
40.31	(a)-(e), (g) applications for specific licenses
40.42	Expiration
40.43	Renewal of licenses
40.44	Amendment of licenses
40.45	Commission action to renew or amend
40.46	Inalienability
40.61	Records
40.62	Inspections
40.63	Tests
40.64	Reports
40.71	Modification, etc.
40.81	Violations
61.1	Purpose and scope
61.4	Communications
61.5	Interpretations
61.6	Exemptions
61.7	Concepts
61.9	Employee protection
61.20	Filing application
61.21	Repetition
61.22	Updating of application
61.25	Changes
61.26	Amendment of license
61.80	Maintenance of records
61.83	Violations
70.1	Purpose
70.2	Scope
70.3	License requirements
70.5	Communications
70.6	Interpretations
70.7	Employee protection
70.19	GL for plutonium reference source
70.20	GL to own SNM
70.21	Filing Applications
70.22	(a),(b),(c),(d),(e) Contents of applications

70.31	Issuance of licenses
70.32	Conditions of licenses (Except statements strictly applicable to strategic quantities of SNM)
70.33	Renewal of licenses
70.34	Amendment of licenses
70.35	Commission Action to renew or amend
70.36	Inalienability
70.37	Disclaimer of warranties
70.41	Authorized use of SNM
70.55	Inspections
70.56	Tests
70.61	Modification and revocation
70.71	Violations
71.0	Purpose and scope
71.1	Communications
71.2	Interpretations
71.3	Requirement for license
71.7	Specific exemptions
71.9	Exemption of physicians
71.91	Records
71.93	Inspection and tests
71.95	Reports
71.99	Violations
71.101-71.137	QA
150.1	Purpose
150.2	Scope
150.4	Communications
150.5	Interpretations
150.30	Violations

Division 4 Rules

32.14	Manufacture of exempt items
32.15	QA - exempt items
32.16	Transfer reports - exempt items
32.17	Manufacture of Sc-46 resins
32.18	Manufacture of exempt quantities
32.19	Conditions of licenses - exempt quantities
32.20	Transfer reports - exempt quantities
32.22	Manufacture of self-luminous products
32.23	Safety criteria - self-luminous products
32.24	Table of organ doses - self-luminous products
32.25	Transfer reports - self-luminous products
32.26	Manufacture of gas and aerosol detectors
32.27	Safety criteria - gas and aerosol detectors
32.28	Table of organ doses - gas and aerosol detectors
32.29	Transfer reports - gas and aerosol detectors
32.40	Schedule A
61.8	Reporting: OMB approval
61.16	Other information
61.58	Alternative requirements
61.70	Scope
61.71	State and Tribal consultation
61.72	Filing of proposals

1/25/84

61.73	Commission approval
70.13	DOD
70.13a	Foreign aircraft
70.20a	Strategic quantities of SNM
70.20b	Carriers of SNM
70.22	(f),(g),(h),(i),(j),(k) and (l)
70.23(b)	Requirements for approval - Pu processing
70.24	Criticality
70.44	Creditor regulations
70.51	Material balance, etc.
70.52	Reports of criticality
70.53	Material status reports
70.54	Transfer reports
70.57	Measurement control program
70.58	Nuclear material controls
70.59	Effluent monitoring
70.62	Suspension and operation in war
71.18 - 71.24	Fissile material
71.31 - 71.77	NRC package approvals
71.83	Assumptions -unknown properties
150.7	Persons in offshore waters
150.10	Persons exempt
150.14	Physical Protection
150.15	Persons not exempt
150.15a	Continued Commission authority
150.16	Material transfer reports
150.17	Material transfer reports
150.17a	US/IAEA Safeguards requirements
150.19	Tritium reports
150.21	SNM by aircraft

Questions for State ~~and Licensee~~ Views on Agreement State Compatibility

1. How do you define "compatibility" of radiation control regulations?

2. Do you believe State regulatory requirements that are matters of compatibility should be identical to NRC regulations? Why or why not?

3. Can you provide an example where regulations are required to be identical and you believe they don't need to be identical?

4. Do you think NRC is attempting to go beyond what is authorized by the Atomic Energy Act regarding the matter of compatibility? If so, explain.

5. Should compatibility be applicable solely to regulations or should it be applied to the entire Agreement State Program? Why or why not?

6. A number of States are not compatible. What is your view of the reasons for this non-compatibility?

7. Do you believe NRC has appropriately categorized its rules for compatibility? Why or why not?

8. Do you believe the number of rules in any of the categories is too numerous or about right for comprehensive coverage? Explain.

9. Are there any areas of compatibility that are particular troublesome to your state's radiation control program? Explain

10. Are there any improvements you could suggest for compatibility requirements?

11. Generally, is the 3-year time period allowed for adoption of compatibility requirements adequate?

12. Are there any legislative impediments to the three years allowed to adopt compatibility requirements? If yes, what are they?

13. Do you believe there is adequate opportunity for States' input in determining which rules should be matters of compatibility?

14. Should NRC develop exception criteria for a State not adopting a rule deemed a matter of compatibility if the State requests such an exemption and can justify the request?

15. Do you find the Suggested State Regulations (SSR) to be helpful? If not, why?

16. Do you have any other comments you would like to share on the matter of compatibility?

INDIVIDUAL STATE RESPONSES TO QUESTIONNAIRE

Question 1: How do you define "compatibility" of radiation control regulations?

State 1: Licensees going from one jurisdiction to another would deal with no gross difference in basic health physics programs.

Regulations may be the same, but implementation could be different; NRC has focussed on regulations rather than implementation (e.g. Radiation Dosimeter-compatibility for States vs. License conditions)

State 2: Having same intent, but not identical; can be more restrictive.

State 3: Essential consistency without being identical; administrative and procedural matters can differ except 274, 0; have a system to make things work, but not a specific requirement.

State 4: States more stringent

- Medical license instruments by general license provisions would not be permitted today

- Disposal and BRC

LLW problem. States are responsible for sites; NRC help is OK, but not unless States ask. States are adequately protecting the public.

- There should be BRC rule but politically NRC should not fight. NRC will lose with Congress and public.

State 5: NRC has nickel/dime concern with State regulations for limited agreements; we've been burned by the 1 mrem regulation. Agreements State Programs have to meet the minimum standard to protect public health and safety as does NRC program. However, compatibility does not mean identical. Compatibility has two aspects: 1) program compatibility which is the basis of the policy and there is 2) regulation compatibility which is an internal procedure which is shakier in terms of whether it is legal. Procedures are not consistent with what the policy statement says on LLW. NRC's fixation on definitions is crazy. Certain parts of regulations need to be Division or Category I (e.g., Radiation Standards, Waste Classification, interstate commerce items). Do not need a whole lot of regulations in Division I.

State 6: State regulations have the same or similar application and interpretation even though the language may be different.

State 7: For example, need regulations that require surety, but not specific surety requirements, all states will have slightly different programs per their legislative requirements. Need performance standards and states decide how to get there. If states end up in conflict with NRC, then everyone looks bad.

State 8: Suppose to be identical in Category I, concept the same but can be more restrictive in Category II; Category III is optional.

State 9: Regulations that exist in harmony and are equally effective in protecting public health & safety and environment - an equivalent regulatory program.

State 10: Follows the basic character and philosophy of NRC regulations; may not use the same means, but overall protective action is the same. Safety numbers (exposure limit) must be met, but states can be lower if justified. Interstate commerce must not be interfered with. Even some parts of 10 CFR Part 20 may not need to be identical and can be justified.

State 11: Based on same radiation protection standards using same limits for release, and exposure which allows individuals to move from one jurisdiction to another w/out encountering substantially different requirements.

State 12: Having same general intent of the law but not necessarily identical. Husband and wife are compatible but they don't look alike.

State 13: Fairly alike to avoid a mishmash that would result in different regulations among states and states different from NRC regulations.

State 14: Regulations that are similar, so that uniform enforcement and control of licensees who have operators are applicable to both sets of regulations.

State 15: State regulations should match NRC's regulations in 10 CFR's.

State 16: Capable of living or performing in harmonious, consistent or congenial combination; capable of efficient integration-- far from identical.

Question 2: Do you believe State regulatory requirements that are matters of compatibility should be identical to NRC regulations? Why or why not?

State 1: Should not always have to be identical.

State 2: No, <u>can</u> be identical, but not required. Identical items should be dose requirements and waste disposal.

State 3: No. Radiation standards have to be at least as restrictive as NRC, but States should be allowed to be more restrictive. Three areas should have a high degree of uniformity but do not have to be identical: (1) radiation standards, (2) products of interstate commerce, and (3) mobile people (radiographers and well-loggers).

State 4: Should "compatible" be replaced with "identical"? There is lot of merit in making regulations identical. If compatible, States need room to slosh around but this could cause interstate commerce problems. Either make regulations compatible or identical. Don't make it sound like we have a choice when we don't. Radiation standards need to be identical.

State 6: No, State legislation may require differences.

State 7: Need basic criteria for compatibility. In some cases "the number" for release limits and doses should be identical; in others it should be close enough. NRC and States should decide together, not individually.

State 8: Yes for Category I regulations. Some proposed rules may not need to be identical (e.g., accelerator regulation).

State 9: Some regulations should be identical - those involving dose limits and items that cross state boundaries. Others should be more flexible if they give the same level of protection. Radiation Dose levels, emission standards, posting and labeling should be identical and uniform. An example where differences should be allowed is the 6-month instrument survey. For industrial radiography meters which is needed less frequently because of better meters available.

State 10: See response to Q1.

State 11: Yes and no. Some standards should be identical, while others should not be identical. States regulations cover other areas, while NRC focusses primarily on power reactors and certain radiation standards. States have more comprehensive radiation regulation program. 10 CFR parts 34 and 35 should not have to be identical and portions of Part 20 are not good for x-ray machines. See also response to Q6.

State 12: No. Some State legislation makes it difficult to be identical.

State 13: States should be able to have more restrictive regulations. State laws may require something that is not identical.

State 14: State statutes impede word-for-word identicality.

State 15: No. State regulations should be aimed at the same goal or standard as NRC but could be more stringent because states have nuclear industry other than those NRC has.

State 16: No, should have only same goal. Only two regulatory categories should be identical (and States should not have less of a standard on): (1) basic health protection standards and exposure limits; and (2) interstate commerce items. States should be allowed to have more stringent standards; e.g., PL 95-604 on uranium tailings requires that standards shall be adopted by States for protection of public health and safety, and environment from hazards associated with materials which are equivalent to the extent practicable or more stringent.

Question 3: Can you provide an example where regulations are required to be identical and you believe they don't need to be identical?

State 1: Glass frit should be dropped out of regulations since it has no public health and safety implications.

State 2: Part 61, Part N on soil contamination only. There should be another class of waste in addition to NRC's A, B, and C (water, air)

State 3: 1 mrem for waste site and medical misadministration (less stringent by not requiring diagnostic misadministration reporting to NRC).

State 6: NRC regulations requiring well logging sealed source puncture test to be performed with a "one-gram hammer;" something else would have made better sense - this is an NRC regulation error.

State 8: None currently on the books.

State 14: Administration rule and bankruptcy requirements should be identical.

Question 4: Do you think NRC is attempting to go beyond what is authorized by the Atomic Energy Act (AEA) regarding the matter of compatibility? If so, explain.

State 1: Mindset of words is the same, yet implementation is different among States.

State 2: Yes, NRC believes that States will not have regulations unless they are made matters of compatibility.

State 3: Yes, before agreement state status you have to be adequate and compatible, yet afterwards a state need only be adequate. If compatibility is getting so stringent that everything States do have to be identical to NRC, then the policy is being abused. Non-compatibility shouldn't matter because State programs still protect the public.

State 5: Yes - AEA's intent is that the State's program protects public health and safety the way a comparable program in NRC does. Using compatibility to "force" BRC is not AEA intent.

State 6: Yes - need input from States before NRC decides which regulations should be matters of compatibility.

State 8: Don't know. Rules of general safety need to be compatible, but how to carry this out can vary as long as objective or concept of rule is accomplished.

State 9: Yes. There are no clear criteria for determining compatibility. All rules should be compatible, but only some need to be identical. Section 274 of AEA requires NRC to cooperate with States in developing standards to make sure programs are coordinated and compatible.

State 10: Yes. After an agreement is approved by NRC, States are not required to be compatible, just adequate per the AEA. States should be allowed to change with justification.

State 11: Need agreement on procedure for determining which regulations are matters of compatibility. Used to have well-defined guidelines for determining compatibility. Feel these have been misplaced. Both NRC and States should decide on compatibility items together. NRC should listen to States.

State 12: Maybe, if NRC's intent is to make all States have programs identical to NRC.

State 13: No.

State 14: Yes. NRC feels States should have identical programs, not that health and safety is affected.

State 15: Yes. What was required for compatibility at beginning of an agreement should be sufficient. Act doesn't say "plus all changes in the future."

State 16: Agreements themselves state that NRC is to use its best effort to cooperate with States in the formulation of standards and programs. Sending Advance Notices of Proposed Rulemaking and draft regulations to States for comment is not using best efforts - need State representatives before NRC authorship becomes set and no changes are likely.

Question 5: Should compatibility be applicable solely to regulations or should it be applied to the entire Agreement State Program? Why or why not?

State 1: Look at implementation of regulations not just if the regulations are the same. Programs can be compatible even though regulations are not the same.

State 2: Whole program, not just regulations.

State 3: Apply to most aspects including mobile people involved in ASNT.

State 4: Probably the whole program.

State 5: Should look at compatibility of program and regulations. See response to Q1.

State 6: Regulations only. Operational elements of the program are a matter of State rights. Unless State programs are grossly inadequate, matters of compatibility should be revised or dropped.

State 8: Only regulations. Don't require States to pattern their organizations after NRC's organizations.

State 9: Compatibility should apply to both. Inspection requirements should be compatible to lend the same level of protection among States and NRC.

State 10: Apply to entire program and this should be applicable to NRC as well. Compatibility is a two-way street between NRC and States.

State 11: No agreement on this item. Program should be somewhat compatible for "like" things. Some regulations should be compatible so that individuals moving among jurisdictions should not encounter vast differences on every detail of Agreement State Program requirements.

State 12: Apply compatibility to entire program as long as compatibility does not mean identical.

State 13: Regulations should be compatible and then NRC should look at State's program to assure appropriate capability and whether program is compatible with NRC's program to regulate similar materials.

State 14: Regulations only. States are responsible for their programs and don't need big brother. Could be problems with state Administration providing for programs without compatible regulations.

State 15: Lawyers don't understand ALARA; if there are no firm standards or "numbers", how can companies be in violation of standards/ regulations? Commerce may be impeded with "moveable" standards. Detection of contamination relies on state-of-art for detectibility.

Question 6: A number of States are not compatible. What is your view of the reasons for this non-compatibility?

State 1: Compatibility regulations viewed by states as not necessary.

State 2: Budget (staff) reasons. NRC should be looking at entire program looking at more than just the regulations for compatibility.

State 3: Probably a matter of timing, not sure.

State 4: Too many regulations that are matters of mpatibility. Also, some States want to do better so regulati ns may differ. Own political pressures in States impact on t ming for adopting regulations quickly.

State 6: Glass frit exemption not being dropped from NRC regulations even though it is unlikely that States would use the exemption. Possible inconsistencies among Regions on compatibility decisions.

State 7: (State) has been compatible most of the time. Incompatibility helps the radiation control program get support from State government. Funding and staffing problems tend to be at the base of non-compatibility. NRC Shouldn't hammer States that are not compatible because that is not good for a partner relationship. OSHA inspector-type mentality is not helpful.

State 9: Staffing problems, delays in SSR's, unclear list of all compatible items (not knowing exactly what needs to be changed).

State 10: Regulations have no impact (e.g., industrial radiographer must be observed every 1-3 months by State to continue working. If a State only has 1 radiographer, there is not much push/support for putting in this requirement in State regulations. Concerning glass frit - what difference does it make whether States adopt or not?

By the time SSR comes out, States should have 3 years to adopt, not 3 years from the time NRC makes rule final.

Political environment (e.g., medical misadministration: States weren't told up front it would be a compatibility item).

State 11: Don't know since NRC doesn't identify to all States those that are not compatible. Resources are a problem. Some States don't agree with certain regulations being matters of compatibility, so they are not adopted.

State 12: Resources.

State 13: Must not have adequate support (from within the State's government).

State 14: Poor communication with NRC which is unaware of State problems.

Question 7: Do you believe NRC has appropriately categorized its rules for compatibility? Why or why not?

State 2: No - need development of compatibility criteria.

State 3: Probably yes.

State 6: Categories are fair, but application needs improvement. If a requirement is not applicable, State should not be found deficient.

State 8: Some OK (e.g., Radiation Standards).

State 9: Need criteria for compatibility.

State 10: Need compatibility criteria. If objective is to protect public health and safety, then there are probably too many Division I rules. If the purpose of NRC is to make States identical, then there are not enough Division I rules.

State 11: Don't know what the rules are for compatibility. Some are inappropriate for compatibility Category/Division I (e.g., Well-logging requirements using survey meter which was the only one available at the time that the requirement was levied; now obsolete).

State 13: Yes.

State 14: No.

State 16: Seems like <u>all</u> new regulations/requirements are being made matters of compatibility.

Question 8: Do you believe the number of rules in any of the categories is too numerous or about right for comprehensive coverage? Explain.

State 2: Too many identical ones.

State 3: Seems about right.

State 4: Too nit-picky to get all states to follow suite (e.g., medical rule).

State 5: See response to Q1.

State 8: Too many in Division I.

State 9: Too many in Division I; NRC erroneously includes items other than basic standards (e.g., Part 40 basic philosophy) in Division I.

State 11: "Thickness" or details of regulations have gotten out of hand.

State 13: Distribution OK, NRC has not gone overboard.

State 15: LLW regulations are out of control. NRC regulations in Division I come down from NRC's Commission without listening to State problems.

State 16: Too many seem to be in Division 1.

Question 9: Are there any areas of compatibility that are particular troublesome to your state's radiation control program? Explain?

State 1: Timing can be a problem for adopting regulations because of internal "legal bureaucracy".

State 2: Keeping up with all the requirements (not just rules) is becoming a problem.

State 3: Applying BRC to waste, ASNT, and medical misadministrations.

State 6: Program review differences have surfaced between regional and headquarters staff - need to coordinate better within NRC.

State 9: Definition of compatibility; some rules seem to have no reason for being compatible.

State 10: Industrial radiographers using 3rd party testing (ASNT) potential problem. Really self-testing because company getting tested hires the tester. States may be forced to accept ASNT certification of radiographers from another State. Would have preferred State and NRC testing.

State 11: Items defined compatible without adequate justification. Time limits for adopting regulations hard due to small numbers of experienced staff.

State 13: None are troublesome.

State 14: Yes - those requiring statute changes.

State 15: The way some states are organized and have to promulgate their regulations might introduce a rift in achieving compatibility. For example LLW is outside of State Radiation Control Program so no pressure can be applied by Radiation Control managers to get LLW regulations drafted. This can result in non-compatibility. Never before has the rationale for certain regulations been questioned, but this is changing. Attorney General, and the Interstate Commerce Commission will likely pay more attention.

Question 10: Are there any improvements you could suggest for compatibility requirements?

State 1: Suggest that a group of NRC and States look at ground rules for compatibility. Then have an ad hoc group look at individual rules to determine if they should be matters of compatibility.

State 2:
- Should develop explicit criteria for determining what rules need to be matters of compatibility.

- Favor uniformity similar to CRCPD criteria for a Licensing State Concept

- If a State is compatible with NRC, other States know what is going on in each State and are confident in the level of protection provided by those states.

- States should be involved in developing compatibility criteria with NRC

- Involve States in compatibility determination on a rule-by-rule basis

- Like public involvement;States involved in determinations will feel like they have part ownership in the decisions.

State 3: Focus on health and safety primarily in 3 areas as indicated in response to Q2.

State 6: Permit State participation in development of compatibility definition and criteria.

State 7: Need State participation in criteria development and application to regulations.

State 8: Develop compatibility criteria.

State 9: Develop criteria and guidance.

State 10: Need a group of Federal and State people to review rules at an early stage (e.g., ANPR or before) to determine if a regulation meets compatible criteria. When proposed rule goes out, there needs to be an indication as to whether it is a matter of compatibility.

State 11: Need more input from States early. Establish an NRC and State task force to review compatibility. Get states input to regulation development. Need document with all compatibility regulations highlighted.

State 12: Much more State activity is needed in development of compatibility criteria. States would buy off more if they were part of the process.

State 13: No improvements. It's a good thing.

State 14: NRC should back off and provide early notification and communication, to States on regulations.

State 15: State involvement is needed in developing compatibility criteria. Then there should be an audit of the decision process. We have an agreement with NRC, not a delegation.

State 16: Need to develop criteria for compatibility with State representatives. Then what is compatible and what is not, would fall out fairly easily. States feel Commission is arbitrarily deciding what regulations will be matters of compatibility. Need State input while developing regulations.

Question 11: Generally, is the 3-year time period allowed for adoption of compatibility requirements adequate?

State 1: Three years is reasonable.

State 2: Three years should be enough time. However, small staffed organizations seem to be writing rules all the time.

State 3: Probably OK; most cases no problem.

State 4: Three years should be adequate.

State 5: Difficult to do in three years.

State 6: Yes it is adequate.

State 8: It should be.

State 9: Yes, if states know about requirements early enough.

State 10: Three years should be allowed from the time States get SSR's.

State 11: Normally, usually and most generally.

State 12: Yes.

State 13: Could be problems with Administrative Procedures Act that make it troublesome to get requirements within 3 years although his State has no problems. If state regulations are the same as Federal regulations, then they are exempt from legislatures approval. X-ray regulations need this approval.

State 14: No.

State 15: Sometimes three years is difficult because drafting regulations impacts already strained resources and may be outside of Radiation Control Program Administer's control.

State 16: Yes, it is a good target even though we have not always met it because we have not always operated properly within the State.

Question 12: Are there any legislative impediments to the three years allowed to adopt compatibility requirements? If yes, what are they?

State 1: No, lawyers cause the delay.

State 2: No; more relative to size and availability of staff.

State 3: More a matter of judgment whether the timing is right for requirements to be adopted.

State 4: No.

State 6: Only legislation revisions may create problems since State legislature meets every 2 years. Rule changes requiring State legislation changes may be a problem.

State 8: No.

State 9: Not in our State.

State 10: Not in our State.

State 11: Usually tied to inadequate funding. May be difficult for some States, not in our State.

State 12: None.

State 14: Yes.

State 15: No.

Question 13: Do you believe there is adequate opportunity for States input in determining which rules should be matters of compatibility?

State 1: No - Part 35 was rammed through, yet field people (State and regions) were opposed; States need more say early and as an equal to NRC.

State 2: No.

State 3: Not sure; State views need to be presented more strongly to Commission.

State 4: There is no input now by States.

State 5: Suspect States were not consulted early enough for some regulations. Need to know up front, before public comments on regulations.

State 6: No. Criteria needs to be developed to define compatibility, identify matters of compatibility, and a process established for States to participate in NRC decisions.

State 7: No - need State input early before NRC decides. Need State input on criteria and which regulations are "compatibility".

State 8: No - States need to be included early in the process.

State 9: No opportunity for input.

State 10: No.

State 11: No, not at present.

State 12: No.

State 13: Yes, adequate notices of what's coming up. It's important to have State input before regulations are published in the Federal Register. Coordinate State input through CRCPD.

State 14: No. Don't believe NRC listens to State's input.

State 15: Doesn't seem to be. NRC "secretly" decides or decrees regulations that are compatible and states have no influence.

State 16: States should be involved in drafting regulations otherwise NRC's authorship prevails even if States are provided the chance to comment.

Question 14: Should NRC develop exception criteria for a State not adopting a rule deemed a matter of compatibility if the State requests such an exemption and can justify the request?

State 1: Don't know, probably not.

State 2: Yes - you can have intent without being identical.

State 3: Sounds OK, but puts the burden on States to justify exemption. States still may not do something that's a matter of compatibility even after justification is rejected by NRC - then what?

State 4: Should we have flexibility? Does lack of compatibility have real impact on public health and safety or worker protection, environment? A lot of administrative stuff is a matter of compatibility and doesn't bear on public health and safety.

State 5: Yes, if State shows it is adequately protecting public health and safety; allows flexibility.

State 6: Yes, State political climate may require exemption; also some States may not have particular industry or licensee to which NRC regulations would apply.

State 7: Could get out of hand and States could try to ratchet NRC. Need performance standard. How would New Agreement States be handled vs current Agreement States?

State 8: Don't know. Could make States jockey with each other.

State 9: Probably for certain situations criteria should be pre-established.

State 11: Good idea.

State 12: Yes, with adequate justification.

State 13: Exception criteria would be appropriate.

State 14: Yes.

State 15: Should have flexibility on 3-year period for regulation adoption.

State 16: Why a matter of compatibility in the first place?

Question 15: Do you find the suggested State Regulations (SSR) to be helpful? If not, why?

State 1: We use both SSR's and NRC regulations to make sure our State is completely covered.

State 2: Yes - use SSR's.

State 3: Yes, if timely.

State 4: Should be if timely.

State 5: Extremely helpful - the earlier the better; NRC's review for new agreement compares State regulations to SSR's, not NRC's regulations. Therefore if State regulations are identical to SSR's, then it is OK with NRC.

State 6: Yes.

State 8: Yes.

State 9: Yes, if timely. CRCPD working on more timely SSR's. Getting regulations signed off by Federal agencies would help expedite SSR's.

State 10: Yes, if timely.

State 11: Yes, SSR's are a labor saver, need to be more timely.

State 12: Yes. CRCPD taking action to improve timing through use of drafts.

State 13: Yes, timeliness is only fair and could be improved.

State 14: Yes; NRC should be on SSR Committee.

State 15: Yes, but new requirements (e.g., Part 20) constantly coming along so a State tends to wait for next SSR update. Could keep waiting for the next new regulation.

State 16: Yes. Our State's statute requires regulations to be compatible with SSR's, not NRC's regulations.

Question 16: Do you have any other comments you would like to share on the matter of compatibility?

State 2: The minimum of two people to staff State Radiation Control Program is not enough; need at least three for administration, rulemaking, etc.

- Rulemaking - Part 20 will be difficult.

- Need more in-depth look at total Agreement State Program, not just regulations.

State 3: States should be allowed to be more restrictive - Not clear why 1 mrem is giving NRC a problem. * If you take the 1 mrem, the 4 mrem EPA, the 10 mrem BRC, and the 25 mrem fuel cycle standard and convert all of these to microrems per hour, you can't measure any but 500 mrem in Part 20. So they are all matters of calculations and modeling.

1987 Harvard Law Review - the AEA makes no statement to preempt State regulations that are more stringent than those of NRC. The LLW Policy Act demonstrates a lack of Congressional concern for uniformity in methods for disposal of LLW - (thus variations should be permissible).

State 5: Why is BRC hinged on waste? Suggest decoupling.

State 7: NRC should allow States to be more stringent if political climate calls for it. Agree with Carr on BRC - how this gets to be compatible (our numbers vs your numbers) - don't know. Decommissioning rule - State legislative vs NRC requirements. Develop performance standards. States will work out differences themselves without NRC. Put group together of States and NRC to develop criteria and review compatibility over a short time period where differences are thrashed out and participants are immersed. Would like to see other States' views resulting from this survey.

State 8: Most States want to be compatible. BRC may be difficult. Interested in knowing results of this compatibility survey.

State 9: Hope States will get input if compatibility criteria are developed.

State 10: What is the purpose of compatibility? To maintain limits, or to force program identity? To force certain reasonable uniformity and limit practice is one thing, but, for example, the liability of malpractice issue is not a compatibility issue. If States are protecting public health and safety, what more interest does one have? What is NRC looking for? Need all States' input to this survey.

State 11: It is a two-way street between NRC and States for cooperation and consultation. There will be less griping and more willingness of States to go along with things if they are given a hand in the development of regulations and compatibility requirements. Could establish a process that can be used with other Federal agencies. States don't like things crammed down their throats. If States were better organized they would challenge NRC more.

State 12: Subject of compatibility will be a hot concern of discussion with some States; criteria particularly. Input from States may not change outcome for compatibility review but States feel better about it. CRCPD is willing to serve on a review committee or organize a group or recommend participants.

State 13: Never had a hangup on compatibility issues.

State 15: States should be allowed an opportunity to comment on proposed rules, and a cost analysis should be required on compatibility items.

-There is no uniform criteria for qualifications for health physicists in State programs- this needs to be established.

-In diagnostics, a physician may use a favorite drug in an inappropriate situation and there is no one knowledgeable to stop it. New/revised rule: person requesting diagnostics with radiopharmaceutical does not have to be licensed.

State 16: Since States have more licensees than NRC, the tail seems to be wagging the dog. NRC has resources and capability to develop regulations, but States should be allowed greater input. Would like a copy of recommendations stemming from this survey.