N O T A T I O N V O T E

RESPONSE SHEET

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER ROGERS

SUBJECT: SECY-97-054 - FINAL RECOMMENDATIONS ON POLICY STATEMENTS AND IMPLEMENTING PROCEDURES FOR: "STATEMENT OF PRINCIPLES AND POLICY FOR THE AGREEMENT STATE PROGRAM" AND "POLICY STATEMENT ON ADEQUACY AND COMPATIBILITY OF AGREEMENT STATE PROGRAMS"

Approved * WITH COMMENTS KCR * Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

SEE ATTACHMENT KCR

Kenneth C. Rogers
SIGNATURE

Release Vote / X /

June 20, 1997
DATE

Withhold Vote /___/

Entered on "AS" Yes X No ____

Commissioner Rogers comments on SECY-97-054:

I wish to commend the staff and the members of the joint NRC/Agreement State working group for a job well done. The procedures that are forwarded with SECY-97-054, together with their policy statements and the procedures that previously were developed to implement the IMPEP, form a comprehensive framework for conducting the Agreement State program. I believe that they provide a clear and defensible basis for making determinations of Agreement State program adequacy and compatibility. I approve the staffs recommendation subject to the following comments:

1. I agree with the Chairman and Commissioners Dicus and Diaz that the "Health and Safety" designation be applied, as appropriate, to requirements in compatibility Categories A, B, and C;

2. With the following two exceptions, I agree with the remaining points made by Commissioner Dicus:

   a. While I can agree that at a broad level, the staff could identify which requirements in the QM rule are essential for patient safety, I believe that this is a case where "the devil is in the details." For example, We could agree that procedures are needed to assure that the patient gets the "right" dose. What I question is whether the staff can establish a way of identifying what a "wrong" dose is prior to the rulemaking and particularly prior to facilitated workshops with practitioners. Accordingly, the Agreement States should not be required to adopt the QM rule until the revision of 10 CFR Part 35 is complete;

   b. I can also agree that the definition of "basic radiation protection standards that is in the policy statement can be construed to include the dose limits in the final rule on license termination. However, I see this as a fault with the definition. More specifically, a Commission majority has in a number of instances approved flexibility for Agreement States in adopting limits that would appear to meet this definition (e.g., the "constraint" rule and the license termination rule). I believe that the staff or the joint working group should modify the definition to account for what has in fact been Commission policy. Because it may lead to pitfalls that I have not recognized, I offer the following only as an example of my thinking. I would suggest adding the words, "other than constraints or partitions" before the existing language, "and the dose limits in ..." in the definition in the policy statement.

I would also like to commend the members of the joint NRC/Agreement State working group on the regulatory insight that

they exhibited in developing the concept of the 'essential objective' of a requirement. I believe that this concept, as defined by the working group, has generic applicability to NRC work and should find broad application as the Agency moves toward a more performance-based regulatory approach.