

March 3, 1997

For: The Commissioners

From: L. Joseph Callan /s/
Executive Director for Operations

Subject: 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"

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- Recommendation:
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Purpose:

1. To obtain Commission approval of the proposed final "Statement of Principles and Policy for the Agreement State Program" and submit proposed final implementing procedure for this Policy Statement.
2. To obtain Commission approval of the proposed final "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and submit proposed final implementing procedures for this Policy Statement.

Background:

In Staff Requirements Memorandum (SRM) dated June 29, 1995 (SECY-95-112; SECY-95-115), the Commission approved two Policy Statements: the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program." The Commission, however, deferred implementation of these Policy Statements until staff developed supporting implementing procedures. The Commission directed staff to complete such procedures and to provide the procedures to the Commission, along with any changes to the Policy Statements that may be required to reflect the implementing procedures.

The staff responded to the June 29, 1995 SRM in SECY-96-213, Implementing Procedures for the Policy Statements: "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on Adequacy and Compatibility of Agreement States Programs," dated October 3, 1996. SECY-96-213 transmitted to the Commission:

(1) "Statement of Principles and Policy for the Agreement State Program;" Final Statement of Policy, (2) draft Management Directive 5.8, "Proposed 274b Agreements with States," (3) "Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs" (Working Group), that included the Working Group Charter, revisions recommended to the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," and proposed implementing procedures (Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," Handbook 5.9, "Adequacy and Compatibility of Agreement State Programs," and Revision 1 to Office of State Programs (OSP) Internal Procedure B.7, "Compatibility and Health and Safety Component Classifications for NRC Regulations and Program Elements."

The Commission responded to SECY-96-213 by SRM dated November 8, 1996. The Commission directed the staff to resubmit the "Statement of Principles and Policy for the Agreement State Program" and proposed final implementing procedures for Commission approval when the staff submits the final recommendations on the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." This paper responds to the actions directed in the November 8, 1996 SRM.

Discussion:

I. Statement of Principles and Policy for the Agreement State Program and Related Procedures

The staff requested comments from the Agreement States on a draft implementing procedure for the "Statement of Principles and Policy for the Agreement State Program," on November 15, 1996. This procedure included Management Directive 5.8, "Proposed 274b Agreements with States," and its associated handbook, "Handbook 5.8," that contains the format for a standard Agreement and the procedures for implementing new Agreements in a phased manner. The staff received 12 comment letters on Management Directive 5.8. Staff analyzed comments and determined that further revisions were needed on the "Statement of Principles and Policy for the Agreement State Program" and its related implementing procedure, Management Directive 5.8. The analysis of comments, and a copy of the procedures are attached as Appendix A. The major revisions are summarized as follows:

1. When the draft "Statement of Principles and Policy for the Agreement State Program," was published in the *Federal Register* on August 5, 1994, there were no significant comments received in opposition to the phasing of new Agreements. However, in comments received as a result of the November 1996 request for comments, strong opposition was raised from eight Agreement States on the inclusion of mandatory phased Agreements for States seeking Agreement State status. Commenters pointed to a variety of concerns with this approach. These concerns included the need for multiple program funding requests to State legislatures, assessment of licensee fees, staffing levels, training, inspection and licensing coordination, and the impacts of Integrated Materials Performance Evaluation Program (IMPEP) reviews on a phased program. Staff agreed with the concerns associated with the use of phased Agreements raised by the States. In addition, staff believes that recent experience gained in the negotiation of the Massachusetts Agreement has provided assurance that new Agreement States will be fully capable of effectively regulating even the most complex licensees upon the effective date of a new Agreement. Thus, it is not necessary to have phased implementation. As a result, NRC Management Directive (MD) 5.8 and Handbook 5.8 were revised to eliminate the phased Agreement concept. The phased Agreement concept was removed from the "Statement of Principles and Policy for the Agreement State Program."
2. The "Statement of Principles and Policy for the Agreement State Program" was edited to indicate that the NRC would no longer require States to adopt NRC requirements in the form of rules or regulations as discussed below.

II. Policy Statement on Adequacy and Compatibility of Agreement State Programs

The August 21, 1996, "Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," was provided to the Agreement States for review and comment on August 23, 1996. In September 1996, staff provided the Working Group report to other stakeholders, who served as panelists at the November 15, 1994 public workshop, "NRC Workshop: Proposed New Policy Statement on the Adequacy and Compatibility of Agreement State Programs." Staff also published a notice of availability of the Working Group report in the *Federal Register* on September 19, 1996 (61 FR 49357).

Comments on the Working Group's report were received from the Organization of Agreement States (OAS), individual Agreement States, industry and an environmental group. Ten letters were received that addressed the following issues: (1) NRC-Agreement State cooperation, (2) compatibility, (3) continuation of compatibility following effective date of an agreement, (4) form of regulatory requirements, (5) IMPEP, and (6) the categorization system and categorization of specific rules in the proposed implementing procedures.

Staff reconvened the Working Group to analyze the comments received on the proposed implementing procedures. The Working Group completed its activities and provided a letter transmitting the "Supplemental Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs" (Supplemental Report) to the Director, Office of State Programs, dated January 29, 1997. As a result of the analysis of comments and further review, the Working Group has suggested additional revisions to the proposed final "Policy Statement on Adequacy and Compatibility of Agreement State Programs," the proposed implementing procedures in Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," Handbook 5.9, and OSP Internal Procedure B.7 (Revision 1). Appendix B contains the Working Group's Supplemental Report that includes the summary of public and Agreement State comments and responses. Copies of these documents are contained in Attachments 1, 2, 3, 4, 5, and 6 of the Supplemental Report. Staff concurs with the Working Group's analysis of comments and suggested revisions.

The final Policy Statement and associated implementing procedures contained in the attachments to this paper represent the final step in a significant change to the Commission's approach for the oversight of Agreement State programs. This Policy Statement and procedures provide significantly more flexibility to Agreement States in adopting NRC requirements. At the same time, the Policy Statement provides a coherent and consistent vehicle for the Commission's review and oversight of Agreement State programs as mandated by Section 274 of the Atomic Energy Act (AEA).

A. Clarifying the Distinction Between the Terms "Adequacy" and "Compatibility"

As discussed briefly in SECY-96-213, the Working Group concluded that the distinction between the terms "adequacy" and "compatibility" should be clarified and emphasized in the Policy Statement. The staff concurs with the Working Group's conclusions on this matter. Since the Policy Statement sets out a departure from past practice in the implementation of the concepts of adequacy and compatibility, the staff believes this issue deserves particular attention.

As a general matter, the term "adequacy" under the Policy Statement refers to an Agreement State's protection of public health and safety within its own State. This represents the core goal or purpose of an Agreement State's radiation control program. "Compatibility," on the other hand, relates to the effects that an Agreement State program's actions or inactions have on the regulation of agreement materials on a nationwide basis or in another State.

The distinction between the two concepts creates a clear means to view NRC's approach to Agreement State reviews. For instance, it is unlikely that NRC would ever require an Agreement State to adopt identical requirements for the purposes of adequacy because Agreement States could always adopt a more stringent standard and still provide an adequate level of protection. In reviewing the compatibility of an Agreement State's program, however, NRC can choose to require an Agreement State to adopt identical regulatory provisions in those cases where, in the Commission's judgement, nationwide consistency is needed.

The staff believes that this approach is consistent with the legislative history of Section 274 of the AEA. As discussed in more detail in the *Federal Register* notice attached to SECY-95-112, the legislative history of Section 274 suggests that the purpose of the compatibility requirement is the facilitation of uniform basic radiation standards across the country in most cases and the avoidance of conflict, duplication, and gaps caused by State and Federal regulation of AEA material. Both of these considerations suggested in the legislative history involve an Agreement State's relationship to other States and to NRC (i.e., the external or nationwide impacts of an Agreement State program). Accordingly, the concept of compatibility involves issues related to the impact that an Agreement State program has on the regulation of agreement material on a national basis or in another State.

The staff believes that this approach to compatibility also has a sound policy basis. The impact that an Agreement State program has on a national basis may not always occupy the same position of importance for that State as does the more immediate concern of public health and safety within the State. For example, it is reasonable to expect that Agreement States generally will not focus the emphasis of their efforts on such issues as the need for consistent transportation requirements across the country or NRC's need to conduct effective and efficient reviews of Agreement State programs. Clearly, Agreement States do consider the impact of their programs on other States or on the nation as a whole. However, the same incentives and pressures that drive the regulation of health and safety within the State do not exist in relation to the effects of the Agreement State's program on a national basis. Accordingly, the type of NRC oversight in the area of compatibility in the Policy Statement is justified in order to ensure that Agreement State programs reflect these "extraterritorial" concerns.

B. Rules Required for Adequacy

Another significant issue addressed by the Working Group involved the designation of rules that an Agreement State must adopt under adequacy. The Working Group initially reviewed NRC regulations and program elements solely to determine their significance under compatibility. The Working Group noted that the version of the Policy Statement in SECY-95-112 offers relatively detailed criteria for compatibility categories, but provides little guidance on the identification of regulations that are required for adequacy. The adequacy section of this earlier version of the Policy Statement indicated that "the State should have existing legally enforceable measures such as generally applicable rules, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in their regulation of agreement material in the State." It was unclear to the Working Group whether the Commission intended to create a list of regulations required to ensure adequate protection or whether the Commission would follow a performance based approach to the review of State regulations related to adequacy.

The Working Group identified this lack of specificity as a problem in the Policy Statement and concluded that certain NRC rules not necessary for compatibility should nonetheless be identified as necessary for adequacy because of their particular health and safety significance. The Working Group proposed the following criteria for identifying rules that should be required for adequacy:

To be designated as having particular health and safety significance, an NRC rule (1) must not be required for compatibility (i.e. it is assigned to compatibility Category D); and (2) its absence from an Agreement State program could result directly (i.e., from two or fewer failures) in exposure to an individual in excess of the basic radiation standards identified in compatibility Category A (Supplemental Report at page 3.) Employing these criteria, the Working Group identified rules that would be required for adequacy and gave such rules the designation "H&S." Under this approach, Agreement States would have the flexibility to have "H&S" designated rules that are more stringent than those of NRC as long as the essential objective of the NRC was met. In addition, language was added to the Policy Statement (Section A. of the Adequacy Portion) to indicate that some specific NRC rules would be required for adequacy.

In addition to its proposal, the Working Group briefly discussed other options to addressing this issue on pages 3-5 of its Supplemental Report. These options range from the development of alternate or additional criteria for identifying specific rules required for adequacy to the treatment of this issue under IMPEP without the use of a specific list of rules that would be required for adequacy. The staff recommends implementation of the Working Group's proposed approach because, in the staff's view, it represents a reasonable means of addressing those rules important for the purposes of adequacy. However, since this represents a significant issue that the Commission has not addressed before, the staff specifically raises it for the Commission's consideration.

C. Revisions to the Policy Statement on Adequacy and Compatibility of Agreement State Programs (Policy Statement)

One significant comment from the OAS addressed NRC's interpretation of Section 274 of the Atomic Energy Act, as amended. Although no revisions were made, the staff would like to bring this comment to the Commission's attention. The OAS comments indicated that a compatible Agreement State program is only required to obtain an Agreement and that there is no requirement by the AEA for continued compatibility after the Agreement is signed. The NRC staff disagrees with that interpretation and that disagreement is discussed further in the attached analysis of comments (see Attachment 1 of the Working Group Report). A summary of the major recommended revisions are discussed below.

C.1. PURPOSE

The "Purpose" section of the Policy Statement was revised to include language that clarifies that any requirements imposed on Agreement States by the Commission stem directly from the Atomic Energy Act itself and not from the Policy Statement since the Commission does not use policy statements to impose requirements.

C.2. BACKGROUND

The "Background" section of the Policy Statement was revised to include language that emphasizes the cooperative nature of the NRC-Agreement State

relationship with respect to identification of program elements. The following language was added,

"In identifying those elements for adequate and compatible programs, or any changes thereto, the Commission will seek the advice of the Agreement States and will consider such advice in its final decision."

C.3. ADEQUACY, COMPATIBILITY, AND SUMMARY

The "Adequacy, Compatibility, and Summary" sections of the Policy Statement were edited to conform to the position that NRC does not have legal authority to stipulate to Agreement States the form that should be used to adopt program elements that have been determined to be necessary for compatibility or health and safety. These sections were revised to clarify the meaning of the terms "adequacy" and "compatibility," and the distinction between these two fundamental concepts. The descriptions of the compatibility categories were simplified for clarity. In addition, the following language was added to clarify the adoption of program elements based on health and safety:

"Specifically, Agreement States should adopt a limited number of program elements based on those of NRC because of the particular health and safety significance of these requirements. In adopting such requirements, Agreement States should adopt the essential objectives of those program elements of the Commission."

D. Revisions to the Proposed Implementing Procedures for the Policy Statement on Adequacy and Compatibility of Agreement State Programs

D.1. GENERAL REVISIONS

The implementing procedures, Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," Handbook 5.9, and OSP Internal Procedure B.7 (Revision 1), were revised to reflect changes made to the Policy Statement that are discussed above. In addition, the Handbook was revised to include a "Glossary" that explains or clarifies important terms used in the Policy Statement and implementing procedures.

D.2. CLASSIFICATION SCHEME

Categories of program elements needed for compatible programs were simplified. Rather than the six designations of 1, 2, 3a, 3aS, 3b and 3b*, only four categories are used: A, B, C and D. Category A (formerly 1) encompasses basic radiation protection standards as defined in the Policy Statement, as well as related signs, symbols and definitions. Category B (formerly 2) are those program elements that have significant and direct transboundary implications, such as transportation regulations. Category C (formerly 3a and 3aS) includes those program elements that would create conflicts, duplications or gaps in the nationwide regulation of agreement material if not adopted by an Agreement State. States should adopt the essential objectives of program elements in Category C. Therefore, there is no need for a separate category, 3aS component, that specifies that program elements adopted by the States should be "at least as stringent as" those adopted by NRC and program elements. These former "3aS" program elements are now included in Category C. Category D (formerly 3b) identifies NRC program elements that do not affect compatibility.

D.3. CHANGES IN CATEGORIZATION OF SPECIFIC NRC RULES

With respect to comments concerning the categorization of specific NRC rules, the Working Group re-examined each rule categorization that was questioned and made changes as appropriate. Working Group members generally concurred on changes (or retention of the original designation) with the exception of 10 CFR 35.32, the medical quality management rule. In response to a recommendation from several Agreement States, the Working Group reconsidered the category for Section 35.32 and agreed not to change any paragraphs from their original 3b* classifications (not required for compatibility, but identified as having health and safety significance) but to add to this category Section 35.32(a)(5), that requires unintended deviations from written directives to be identified, evaluated, and appropriate action taken.

E. Implementation Issue Regarding the Policy Statement on Adequacy and Compatibility of Agreement State Programs

E.1. LEGALLY BINDING REQUIREMENTS

One issue addressed by the Working Group relates to the degree of flexibility afforded an Agreement State in the method followed within that State to implement legally binding requirements. It deals with the question of whether there are certain requirements, such as Part 20, which apply to all licensees and thus, should be adopted by a State as a regulation, as opposed to adoption through another form of legally binding requirement, such as a license condition or order. It also relates to whether a State should be required to adopt legally binding requirements by regulation, as opposed to an alternative method, when the State has more than one (or only a few) licenses that would be subject to that requirement.

The Office of the General Counsel has advised the staff that the Commission does not have statutory authority to require States to adopt legally binding requirements specifically by rule. States must be provided the flexibility to adopt generic requirements by rulemaking or other legally binding mechanisms applicable to groups of licensees. The Working Group has revised the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," and the implementing procedures to reflect the ability of States to adopt generic requirements by rulemaking or other legally binding mechanism. This concept was also reflected in changes to the "Statement of Principles and Policy for the Agreement State Program."

E.2. DEFERRAL OF ADOPTION OF A COMPATIBLE MEDICAL QUALITY MANAGEMENT (QM) RULE

In SRM dated November 15, 1995 on SECY-95-258, "Compatibility Findings for Agreement States that have not adopted a 10 CFR Part 35 Compatible Medical Quality Management Regulation," the Commission approved a letter to all Agreement States (SP-95-184) on QM Rule Compatibility. The letter stated that for any State that had not yet adopted a compatible QM rule, NRC would defer compatibility findings on the QM rule through December 6, 1996.

The letter encouraged States to initiate or resume QM rulemaking action in spite of the uncertainties with NRC's long-term role in this regulatory area. The letter also provided increased flexibility to States in adoption of QM rules in two areas as approved through SECY-95-258. This flexibility allows the States to: (1) determine the method by which a licensee is required to submit its quality management program (QMP); and (2) to expand their misadministration definitions to permit coverage of non-AEA medical radiation procedures.

Currently, 19 Agreement States have adopted a QM rule. Ten Agreement States have not yet adopted a QM rule but 5 of these States are working on drafts. Because of the uncertainty surrounding the compatibility of the QM rule, NRC staff has generally neither reviewed nor made a compatibility

determination for draft or final Agreement State QM rules.

Staff has considered the need for Agreement States to adopt a QM rule in view of: (1) NRC's planned revisions to Part 35, (2) the proposed designation of Section 35.32 in the proposed implementing procedures (not required for compatibility, but paragraphs a, b, and c are needed for health and safety significance), and (3) the flexibility provided for adoption of NRC regulations in the form of legally binding requirements by Agreement States. Staff believes that the best approach, at this time, would be to follow the final implementing procedure for the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." The implementing procedures provide that States should adopt a legally binding requirement that addresses 35.32(a), (b) and (c) for the purposes of health and safety. The implementing procedures (Part V, Regulations) also provide that if an Agreement State had not adopted a regulation in compatibility Category A, B, C or the rule is identified as having health and safety significance, then the rule should be adopted as expeditiously as possible but not later than 3 years after the policy's effective date, or other date set by the Commission. In light of these considerations, and the fact that Section 35.32 (a)(5) was added as a new requirement for health and safety reasons, the staff believes that Agreement States should be allowed up to 3 years to adopt these provisions from the date the Commission approves the final "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and its implementing procedures.

Given the proposed implementing procedures for the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the three year transition period therein, staff does not plan to initiate reviews of existing State QM rules. However, for those States undergoing IMPEP reviews within the allowed three year period, staff will identify any differences between the State's legally binding requirements addressing the NRC QM rule using the final implementing procedure for the "Policy Statement on Adequacy and Compatibility of Agreement State Programs." Identified differences, including the fact that a State has not taken action to adopt a QM rule or legally binding requirement would be noted but would not negatively affect the IMPEP review findings during this three year period. For Agreement States that have not yet promulgated a QM rule, staff will review the compatibility of both draft and final Agreement State equivalents to NRC's QM rule, as they are promulgated and submitted by Agreement States to the NRC.

III. Proposed Final Policy Statements and Other Attached Documents

A *Federal Register* notice to publish, upon Commission approval, the final "Statement of Principles and Policy for the Agreement State Program," and the final "Policy Statement on Adequacy and Compatibility of Agreement State Programs," is contained in Appendix C. Proposed coordination letters regarding the Small Business Regulatory Enforcement Fairness Act are contained in Appendix D. In addition, proposed letters to the NRC Congressional Oversight Committees and a proposed Public Announcement are contained in Appendices E and F, respectively.

Recommendation:

That the Commission approve:

1. The final "Statement of Principles and Policy for the Agreement State Program;"
2. The final "Policy Statement on Adequacy and Compatibility of Agreement State Programs;"
3. The proposed policy addressing NRC rules that Agreement States should adopt because of their particular health and safety significance (i.e., rules or other legally binding measures required for purposes of adequacy, not compatibility).
4. The deferral of the QM rule requirements for Agreement States for 3 years from the date the Commission approves the final implementing procedure for the "Policy Statement on Adequacy and Compatibility of Agreement State Programs;"
5. Publication of the *Federal Register* notice for the "Statement of Principles and Policy for the Agreement State Program" and the "Policy Statement on Adequacy and Compatibility of Agreement State Programs;"
6. Proposed letters to Vice President Gore, Speaker Gingrich, and General Counsel Murphy regarding the Small Business Regulatory Enforcement Fairness Act;
7. Proposed letters to Congressional Committees; and
8. Proposed public announcement.

Note:

Upon Commission approval of the two policy statements, staff will issue the following implementing procedures in final:

1. Management Directive, 5.8, "Proposed 274b Agreements with States,"
2. Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," Handbook 5.9, and OSP Internal Procedure B.7 (Revision 1).

Coordination:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. It has also been coordinated with the Office of the Chief Financial Officer for budgetary and resource impact matters. Staff has obtained concurrence from the Office of Management and Budget that this

action does not constitute a "major rule" under the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA).

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- Attachments:
1. [Appendix A, Analysis of Comments on the Proposed Management Directive 5.8, "Proposed 274b with States," Management Directive 5.8, and Handbook 5.8;](#)
 2. [Appendix B, Working Group's Supplemental Report](#)
 3. [Appendix C, Proposed *Federal Register* Notice](#)
 4. [Appendix D, Proposed Letters regarding Small Business Regulatory Enforcement Fairness Act](#)
 5. [Appendix E, Proposed Letters to Congressional Oversight Committees](#)
 6. [Appendix F, Proposed Public Announcement](#)

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ATTACHMENT 1

PROPOSED 274b AGREEMENTS WITH STATES

DIRECTIVE 5.8

U.S. NUCLEAR REGULATORY COMMISSION
Volume 5: Governmental Relations and Public Affairs

OSP

Policy.

(5.8-01)

- It is the policy of the U.S. Nuclear Regulatory Commission to implement procedures for establishing new agreements with individual States pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

Objectives.

(5.8-02)

- To establish a system for an orderly transition in the discontinuance of certain regulatory authority by the NRC with assumption thereof by the State through a standard agreement.

Organizational Responsibilities and Delegations of Authority

(5.8-03)

The Commission

(031)

- Approves requests from a Governor to enter into an agreement under Section 274 of the Atomic Energy Act of 1954, as amended.
- Approves policy matters related to NRC's Agreement States program.

The Executive Director for Operations (EDO)

(032)

- Provides management direction and oversight for the activities described herein.

The Director, Office of State Programs

(033)

- Coordinates the review and action on State requests for 274b agreements or amendments to agreements with cognizant regional administrator and office directors, including the planning of meetings with the State to discuss issues related to the request. (a)
- Identifies an NRC contact, prepares correspondence to the State, as appropriate, and provides a schedule for accomplishing staff work on the agreement request. (b)
- Reviews State requests for 274b agreements or amendments to agreements to determine adequacy and compatibility of State's program. (c)
- Prepares a Commission Paper that includes the staff assessment of the State's request and a proposed *Federal Register* notice publishing this information for public comment for 4 consecutive weeks according to the Atomic Energy Act. (d)
- Prepares a Commission Paper for final approval of the State's request by the Commission that analyzes and responds to public comments in

coordination with OGC and affected offices (e)

- Prepares approved agreement for the signature of the Chairman and Governor. Arranges all post signing coordination for the transfer of regulatory authority under the effective agreement. (f)

Office of the General Counsel (OGC), Director, Office of Nuclear Regulatory Research (RES), and Director, Office for Analysis and Evaluation of Operational Data (AEOD) (034)

- Consult with the Director, OSP, concerning the proposed agreement. (a)
- Appoint principal working-level contacts for review of the proposed agreement. (b)
- Review, comment and concur, if appropriate, on the proposed agreement and final Commission Paper. (c)

Director, Office of Nuclear Materials Safety and Safeguards (035)

- Consult with the Director, OSP, concerning the proposed agreement. (a)
- Appoint principal working-level contacts for review of the proposed agreement. (b)
- Review, comment and concur, if appropriate, on the proposed agreement and final Commission Paper. (c)
- Coordinate the transfer of license files and other appropriate material for sealed source and devices registrations and site decommissioning management plan sites when agreement is effective. (d)

Regional Administrators
(036)

- Consult with the Director, OSP, concerning the proposed agreement. (a)
- Appoint principal working-level contacts for review of the proposed agreement. (b)
- Assists in the coordination of the review and action on State requests for 274b agreements or amendments to agreements, including the planning of meetings with the State to discuss issues related to the request. (c)
- Review, comment and concur, if appropriate, on the proposed agreement and final Commission Paper. (d)
- Coordinate with the State prior to the agreement on the licenses and contaminated or potentially contaminated sites and decommissioning records to be transferred when the agreement is effective. (e)
- Provide the opportunity for license reviewers and inspectors from the State seeking an Agreement to review Regional licensing casework in progress and observe NRC inspections at the facilities of licensees in State. (f)
- Coordinate the transfer of licenses, license files and other appropriate material when agreement is effective, including meeting with representatives of the State seeking an agreement to describe and explain licenses and files that will be transferred to the State. (g)
- Assure, to the extent practicable, that licensing and inspection backlogs do not exist for licensees in the State seeking an agreement. (h)

Applicability.
(5.8-04)

The policy and guidance in this directive and handbook apply to all NRC employees who process a request for a 274b agreement. (a)

Handbook.
(5.8-05)

Handbook 5.8 contains an overview of the process, guidelines and a standard agreement.

References.
(5.8-06)

Atomic Energy Act of 1954, as amended (42 USC. 2011 et seq.)
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, as amended by policy statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).
Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program (60 FR 39463, August 2, 1995).
Evaluation of Agreement State Radiation Control Programs (60 FR 54734, October 25, 1995).
Management Directive 5.6, Integrated Materials Performance Evaluation Program, approved September 12, 1995.
Management Directive 5.9, Adequacy and Compatibility of Agreement State Programs, approved _____.

PROPOSED 274b AGREEMENTS WITH STATES
HANDBOOK 5.8

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[Overview \(A\)](#)
[Process Sequence for New Agreements \(B\)](#)
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Exhibit

1. Standard Agreement under Section 274b

Overview (A)

NRC is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, to enter into agreements with States -- (1)

- o Upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect 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 material. (a)
- o 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 public health and safety with respect to the materials covered by the proposed agreement. (b)

This management directive and handbook supplement the "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, as amended by policy statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983) and the Office of State Programs Internal Procedure C.1., "Processing a New Agreement." These documents should be used in conjunction with this handbook.

Process Sequence for New Agreements (B)

The typical sequence for NRC in processing a request for an agreement is summarized below:

- o Receive a letter of intent from the Governor of the State interested in an agreement with NRC. (1)
- o Provide guidance to the State on the necessary elements of an Agreement State program including draft legislation, regulations, and program description. (2)
- o Receive and review the request for an agreement from the Governor, the program description, and necessary program elements. (3)
- o Transmit and resolve any outstanding items with the State regarding the proposed agreement request. (4)
- o Prepare Commission Paper on the proposed agreement request, including staff assessment and *Federal Register* Notice with the proposed agreement for public comment. (5)
- o Publish *Federal Register* Notice with the proposed agreement for public comment for 4 consecutive weeks according to the Atomic Energy Act. (6)
- o Prepare Commission Paper that analyzes and responds to public comments and provides staff recommendations on the agreement for final approval by the Commission. (7)
- o Prepare approved agreement for the signature of the Chairman and Governor upon Commission approval and arrange signing ceremony. (8)
- o Arrange all post signing coordination for the orderly transfer of regulatory authority under the effective agreement. (9)

Standard Agreement (C)

The standard agreement describes the categories of materials to be regulated by the State and the effective date of the agreement. (1)

Exhibit 1

AN AGREEMENT
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE STATE/Commonwealth of [insert name of State]
FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY
AND
RESPONSIBILITY WITHIN THE STATE/Commonwealth PURSUANT TO
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954,
AS AMENDED

- ARTICLE I
- ARTICLE II
- ARTICLE III
- ARTICLE IV
- ARTICLE V
- ARTICLE VI
- ARTICLE VII
- ARTICLE VIII
- ARTICLE IX

ARTICLE X

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the State/Commonwealth of [insert name] is authorized under [cite enabling statute] to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State/Commonwealth of [insert name] certified on [date], that the State/Commonwealth of [insert name] (hereinafter referred to as the State/Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State/Commonwealth covered by this Agreement, and that the State/Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State/Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State/Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the State/Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that State/Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State/Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State/Commonwealth acting in behalf of the State/Commonwealth as follows:

ARTICLE I⁽¹⁾

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A.	Byproduct materials as defined in Section 11e.(1) of the Act;
L.	Byproduct materials as defined in Section 11e.(2) of the Act;
M.	Source materials;
N.	Special nuclear materials in quantities not sufficient to form a critical mass.
O.	The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;
P.	The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

ARTICLE II

A.	This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:	
	1.	The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
	2.	The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
	3.	The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
	4.	The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;
	5.	The evaluation of radiation safety information on sealed sources or devices containing byproduct, source,

or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.⁽²⁾

B. ⁽³⁾	Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:
1.	Prior to the termination of a State/Commonwealth license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
2.	The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:
a.	The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
b.	The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State/Commonwealth at the option of the State/Commonwealth (provided such option is exercised prior to termination of the license);
c.	The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State/Commonwealth pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
d.	The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State/Commonwealth;
e.	The authority to require the Secretary of the Department of Energy, other Federal agency, or State/Commonwealth, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and
f.	The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

ARTICLE III⁽⁴⁾

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the State/Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs **[those activities not included in the agreement]**, whereby the State/Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State/Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State/Commonwealth programs for protection against hazards of radiation will be coordinated and compatible. The State/Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State/Commonwealth and the Commission for protection against hazards of radiation and to assure that the State/Commonwealth's program will continue to be compatible with the program of the Commission for the

regulation of materials covered by this Agreement.

The State/Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State/Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State/Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State/Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State/Commonwealth, or upon request of the Governor of the State/Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State/Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State/Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the State/Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a State/Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX⁽⁵⁾

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State/Commonwealth shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State/Commonwealth requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

1. The total amount of funds the State/Commonwealth collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State/Commonwealth license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and
2. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on **[date]**, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at **[City, State]** this **[date]** day of **[month]**, **[year]**.

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____, Chairman

FOR THE STATE/Commonwealth OF _____

_____, Governor

ANALYSIS OF COMMENTS ON
PROPOSED MANAGEMENT DIRECTIVE 5.8
"PROPOSED 274b AGREEMENTS WITH STATES"

INTRODUCTION

On November 15, 1996, the draft Management Directive (MD) 5.8, "Proposed 274b Agreements With States" was transmitted to all Agreement States, Massachusetts, Ohio, Oklahoma and Pennsylvania (SP-96-117).

Twelve comment letters from Agreement State staff were received. The list of commentors is as follows:

1. Aubrey Godwin, Arizona
2. Robert Quillin, Colorado
3. William Passeti, Florida
4. Thomas Hill, Georgia
5. Steven Collins, Illinois

6. William Spell, Louisiana
7. Robert Schell, Maine
8. Diane Tefft, New Hampshire
9. Rita Aldrich, New York Department of Labor
10. Michael Page, Tennessee
11. Richard Ratliff, Texas
12. Terry Frazee, Washington

The comments received were summarized and grouped into the following five areas:

- Phased Agreement Concept
- Changes to MD 5.8
- Changes to Handbook 5.8
- Changes to Standard Agreement
- Miscellaneous

This analysis contains the summary of comments, responses and rationale for disposition. A brief description of the comments responses, and their disposition follows:

PHASED AGREEMENT CONCEPT

COMMENT

Eight states did not support the concept of phased agreement. Commentors pointed to a variety of concerns with this approach. These concerns included the need for multiple program funding requests to State legislatures, assessment of licensee fees, staffing levels, staff training, inspection and licensing coordination between the State and NRC, and the impacts of IMPEP reviews on a phased program. Four commentors questioned whether NRC has the legal authority to phase implementation of the Agreement. Four commentors supported the concept with comments.

RESPONSE

The concept of a phased agreement was incorporated into the draft Policy Statement on Principles and Policy for the Agreement State Program. The draft Policy Statement was published in the *Federal Register* on August 5, 1994 (59 FR 40058) for public comment. In response to the solicitation of public comments, fifteen comment letters were received. No comments were received on the phased agreement concept. At the time the draft policy was published, staff believed that a formal phased implementation process would be advantageous to both NRC and an Agreement State. The advantages were believed to be orderly transition of licensed activities to the State, identification of State's program areas requiring additional guidance from NRC before the State assumed full responsibility and an opportunity for an Agreement State to gain experience with its program prior to having full responsibility. MD 5.8 and Handbook 5.8 were developed as implementing procedures for phased implementation.

Staff believes that recent experience gained since 1994 in the negotiation of the Massachusetts Agreement has provided assurance that new Agreement States will be fully capable of effectively regulating even the most complex licensees upon the effective date of a new Agreement. Thus, staff believes it is not necessary to have phased implementation.

DISPOSITION

As a result of these comments, NRC MD 5.8 and Handbook 5.8 were revised to eliminate the phased Agreement concept. The phased agreement concept was removed from the "Statement of Principles and Policy for the Agreement State Program."

COMMENT

Nine commentors stated that if NRC insisted on a phased agreement approach, in light of the opposition, a phased agreement should be in place only at the request of the State.

RESPONSE

Staff believes that given the validity of comments in opposition to phased implementation of the Policy that the voluntary phased implementation of agreements is not necessary. Staff also believes that few, if any, States seeking new agreements would request a phased agreement.

DISPOSITION

NRC is revising MD 5.8, to eliminate the phased agreement concept. The phased agreement concept will be removed from the "Statement of Principles and Policy for the Agreement State Program." In addition, NRC will not implement an option for phased agreements in the "Statement of Principles and Policy for the Agreement State Program."

CHANGES TO MANAGEMENT DIRECTIVE 5.8

Six commentors recommended that in MD 5.8-03 (035)(a), the Regional Administrators coordination responsibilities should be revised to include coordination on contaminated or potentially contaminated sites and decommissioning records that would be transferred when the agreement is effective.

RESPONSE

The staff agrees with the comment.

DISPOSITION

The MD was revised and MD 5.8-03 (035), "Regional Administrators," became MD 5.8 -03 (036). In addition, this section was revised to include coordination on contaminated or potentially contaminated sites and decommissioning records that would be transferred when the agreement is effective, paragraph MD 5.8 (036) (e).

COMMENT

One commentor remarked that in MD 5.8-03 (035)(b), that it is important for a State to have opportunity to interact with the Regions for both licensing reviews and inspections prior to the agreement.

RESPONSE

The staff agrees with the comment.

DISPOSITION

MD 5.8-03 (035)(b) has been revised to remove the reference to initial phase and include an opportunity for the State to interact with the Region for both licensing reviews and inspections prior to the agreement.

CHANGES TO HANDBOOK 5.8**COMMENT**

Five commentors stated that the first sentence in the Overview (A) is misleading. The commentors stated that the sentence implies that it is a discretionary NRC policy to enter into agreements.

RESPONSE

Staff agrees that Section 274b of the Atomic Energy Act, as amended, says that the Commission shall enter into agreements with the States once the referenced findings are made and that this is not a discretionary policy.

DISPOSITION

The first sentence was revised to remove the reference to "the policy of the NRC is."

COMMENT

One commentor recommended that it should be a prerequisite for Regional Offices to invite inspectors from the State seeking an agreement to accompany regional staff on inspections prior to the agreement.

RESPONSE

The staff believes that every effort is taken to extend an invitation to the State to accompany regional staff and that the language B.2.a in Handbook 5.8 is clear.

DISPOSITION

To emphasize this responsibility, this text was moved from the handbook to the "Organizational Responsibilities and Delegations of Authority" section of MD 5.8-03, and was inserted at 5.8-036, (f).

COMMENT

Seven States commented that NRC should ensure that there is no licensing and inspection backlogs to be transferred to a State when the agreement becomes effective instead of the text "as small as possible" in Handbook 5.8 (B)(2)(c).

RESPONSE

Previous text stated that the backlogs in licensing and inspection would be as small as possible. It is the staff's intention that there be no backlog in either licensing or inspections to the extent practicable exist at the time the Agreement becomes effective. It is impossible to eliminate all licensing backlogs, since some license action requests may be received by the NRC Regional Office shortly in advance of agreement signing.

DISPOSITION

Text in Handbook 5.8 (B)(2)(c) was revised to state that to the extent practicable, that no backlogs would exist. In addition, this text was moved to the

"Organizational Responsibilities and Delegations of Authority" section of MD 5.8, and was inserted at 5.8-036, (h).

CHANGES TO STANDARD AGREEMENT

COMMENT

Ten of the 14 commentors opposed the language modifications in the first paragraph of Article VI of the Standard Agreement, which removed the sentence that NRC would use its best efforts to coordinate with the States and removed the best effort clause from the State's commitment. Several states remarked that eliminating the sentence found in most agreements requiring NRC to use its best efforts to cooperate with the State/Commonwealth puts the States in a role that is subservient to the NRC. Those commenting believe that this provision is the basis for the NRC and State mutual cooperation. Five States indicated that these provisions should not just be dismissed because the language implies equality between the Agreement States and NRC. One state commented that removal of the phrase "best efforts" implied coercion on the part of NRC.

RESPONSE

It was not the staff intention to remove the NRC commitment to cooperate with the State/Commonwealth in the Standard agreement. It was the staff's intention to remove the "best effort" phrase, since it is difficult to define, and to clarify the language that both NRC and State/Commonwealth will be cooperative and will keep each other informed. The staff believe this is a stronger commitment from both NRC and the State/Commonwealth.

DISPOSITION

An additional factual sentence, without qualification, was placed in Article IV addressing NRC's commitment to cooperate with the State/Commonwealth, similar to the commitment from the State/Commonwealth. The phrase "best efforts" was not insert back into the language of the paragraph. The phrase "best efforts" was removed from Section E of the "Principles and Policy for the Agreement State Program" in the sentence regarding NRC and Agreement States commitment to keep each other informed.

COMMENT

Four commentors objected to the last paragraph, Article VI, which specified which reportable events the State/Commonwealth would report to NRC. One State remarked that it was unaware of any situation that required that level of detail. Two States remarked that reporting on a voluntary basis was appropriate and should be continued as long as it could be shown to be of use. One State remarked that reports would change over time or if it was found that they were no longer of use, the State would be required to amend its agreement.

RESPONSE

The staff believes that a commitment to keep the NRC informed, especially where there are generic implications is important. The reporting of incidents has been included in the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" as a matter of compatibility and will not need to be necessary in the Standard Agreement.

DISPOSITION

The sentence on the reporting of immediately reportable, 24-hour reportable, and 30-day reportable events has been deleted.

COMMENT

One commentor asked whether the Standard Agreement, when approved would apply to all Agreement States or would there be effort to grandfather existing Agreements. The commentor stated that new Agreement States should not be treated differently from existing Agreement States.

RESPONSE

The staff has not addressed the issue of revising existing agreements when a standard agreement is approved. The staff is currently evaluating this issue and will coordinate its efforts with and request input from the Agreement States.

DISPOSITION

No changes were made as a result of this comment.

MISCELLANEOUS

COMMENT

Four commentors expressed concerns that MD 5.8 and its handbook were sent only to the Agreement States and not to the non-agreement states that would be affected by these changes.

RESPONSE

MD 5.8 and Handbook 5.8 were sent to those non-Agreement States, Ohio, Massachusetts, Oklahoma and Pennsylvania, whose Governors have expressed interest in becoming an Agreement State. The staff believes that those States presently negotiating agreements are the most affected by

these proposed procedures. These States were notified.

DISPOSITION

No changes were made as a result of this comment.

COMMENT

Two commentors expressed the view that Section 274 of the Atomic Energy Act does not require that compatibility be maintained after an agreement is effective. One commentor objected to the language in Article VII where NRC could terminate or suspend an agreement if the State/Commonwealth has not complied with one or more of the requirements of Section 274 that could include compatibility.

RESPONSE

The staff does not agree with this interpretation of the AEA. Both Sections 274d.(2) and 274g. indicate that the Commission must find a State program to be compatible with that of NRC's in order to enter into a Section 274b. agreement with the State. Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of radiation protection standards "to assure that the State and Commission programs for the protection against hazards of radiation will be coordinated and compatible." This provision demonstrates Congress' intention that the compatibility between the NRC's and Agreement State programs should be maintained on a continuing basis.

Section 274j.(1) calls on the Commission to suspend or terminate an Agreement State's program if "the State has not complied with one or more of the requirements" of the Section 274. The Commission believes that this phrase "one or more of the requirements," encompasses all requirements of Section 274, including the requirement for compatibility.

Finally, the lack of a continuing compatibility requirement would lead to some incongruous results. Under subsection 274d.(2), the Commission is authorized to enter into an agreement with a State if the Commission makes both requisite findings that the State program is compatible with the NRC's program and adequate to protect public health and safety. Absent a continuing compatibility requirement, an Agreement State could divert from having a compatible program the day after any agreement is signed with NRC. This would render the Commission's initial compatibility finding required by Section 274d.(2) meaningless.

DISPOSITION:

No changes were made as a result of this comment.

ATTACHMENT 4

Mr. Robert P. Murphy
General Counsel
General Accounting Office
441 G Street, NW, Room 7175
Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1966, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting two final policy statements.

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

Statement of Principles and Policy for the Agreement State Program. This policy statement establishes Agreement State Program principles and describes the respective roles and responsibilities of the NRC and the States in the administration of this program. This policy statement will provide guidance in delineating the NRC's and the State's respective responsibilities and expectations.

Policy Statement on Adequacy and Compatibility of Agreement State Programs. This policy statement clarifies the meaning and use of the terms "adequate" and "compatible" as applied to an Agreement State radiation control program. This policy statement provides guidance to the Agreement States, NRC staff, and the public to make clear how the Commission intends to evaluate the adequacy and compatibility of Agreement State programs.

We have determined that these policy statements are not "major rules," as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed are copies of the final policy statements, which are being transmitted to the **Federal Register** for publication. These final policy statements are

scheduled to become effective upon publication in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

The Honorable Newt Gingrich
Speaker of the United States
House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1966, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting two final policy statements.

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

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Enclosed are copies of the final policy statements, which are being transmitted to the *Federal Register* for publication. These final policy statements are scheduled to become effective upon publication in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

The Honorable Al Gore
President of the United States Senate
Washington, DC 20510
Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1966, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting two final policy statements.

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

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We have determined that these policy statements are not "major rules," as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed are copies of the final policy statements, which are being transmitted to the *Federal Register* for publication. These final policy statements are scheduled to become effective upon publication in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

ATTACHMENT 5

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee are copies of a public announcement and a *Federal Register* notice announcing the finalization by the Nuclear Regulatory Commission (NRC) of two policy statements.

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

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These policy statements are scheduled to become effective upon publication in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Public Announcement (to be attached by OCA when the announcement is issued)
 2. *Federal Register* notice (to be attached by OCA when the FRN is signed)

cc: Representative Ralph Hall

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed for the information of the Subcommittee are copies of a public announcement and a *Federal Register* notice announcing the finalization by the Nuclear Regulatory Commission (NRC) of two policy statements.

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

Statement of Principles and Policy for the Agreement State Program. This policy statement establishes Agreement State Program principles and describes the respective roles and responsibilities of the NRC and the States in the administration of this program. This policy statement will provide guidance in delineating the NRC's and the State's respective responsibilities and expectations.

Policy Statement on Adequacy and Compatibility of Agreement State Programs. This policy statement clarifies the meaning and use of the terms "adequate" and "compatible" as applied to an Agreement State radiation control program. This policy statement provides guidance to the Agreement States, NRC staff, and the public to make clear how the Commission intends to evaluate the adequacy and compatibility of Agreement State programs.

These policy statements are scheduled to become effective upon publication in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: 1. Public Announcement (to be attached by OCA when the announcement is issued)
2. *Federal Register* notice (to be attached by OCA when the FRN is signed)

cc: Senator Bob Graham

ATTACHMENT 6

PROPOSED PUBLIC ANNOUNCEMENT

NRC ISSUES TWO FINAL POLICY STATEMENTS:

Statement of Principles and Policy for the Agreement State Program and
Policy Statement on Adequacy and Compatibility of Agreement State Programs

The Nuclear Regulatory Commission (NRC) has issued two final policy statements: the "Statement of Principles and Policy for the Agreement State Program," and "Policy Statement on Adequacy and Compatibility of Agreement State Programs."

Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, provides for a special Federal-State regulatory framework for the control of radioactive materials under which the NRC may, by agreement with a State, relinquish its authority in certain areas to the State government as long as the State program is adequate to protect public health and safety and compatible with the Commission's program. Section 274 further directs the Commission to review periodically State programs to ensure compliance with provisions of Section 274. The NRC has developed two final policy statements pertaining to the administration of programs carried out under Section 274.

The Statement of Principles and Policy for the Agreement State Program. This policy statement establishes Agreement State Program principles and describes the respective roles and responsibilities of the NRC and the States in the administration of this program. This policy statement will provide guidance in delineating the NRC's and the State's respective responsibilities and expectations.

Policy Statement on Adequacy and Compatibility of Agreement State Programs. This policy statement clarifies the meaning and use of the terms "adequate" and "compatible" as applied to an Agreement State radiation control program. This policy statement provides guidance to the Agreement States, NRC staff, and the public to make clear how the Commission intends to evaluate the adequacy and compatibility of Agreement State programs.

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1. If the State/Commonwealth chooses not to regulate all categories of material listed in Article I, those categories where NRC will retain authority should be listed in Article II, A.
 2. Include only if the State is not authorized to conduct sealed source and device reviews for purposes of registration for distribution.
 3. Article II.B. is included in the agreement only if the State is authorized to regulate 11e.(2) byproduct material.

4. Delete this Article and renumber the remaining articles if the State/Commonwealth assumes authority over all categories of materials in Article II.

5. Use Article IX only if the State is authorized to regulate 11e.(2) byproduct material.