

September 19, 1997

SECY-97-212

FOR: The Commissioners

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

SUBJECT: AGREEMENT STATE PROGRAM STATUS ASSESSMENT

PURPOSE:

To respond to Item 10 of the Staff Requirements Memorandum (SRM) dated June 30, 1997, on 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.'" Item 10 directed staff to: (1) submit an information paper to the Commission describing staff actions to maintain frequent contact with the individual Agreement States to assess their program status and the procedure that will be used for this purpose and the staff's plan for review of draft State regulations as well as closing out the review of revisions of State regulations for compatibility with Part 20, (2) include the resource requirements in headquarters and the field needed to meet these responsibilities, and (3) inform the Commission how it monitors and reviews State actions, including the review of draft regulations, and inform the Commission of any unexpected or significant problems that develop.

BACKGROUND:

Background for this paper is set out in SECY-96-234, "Status Report on Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)," and 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.'"

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SECY-96-234 provided the Commission with a status report on the implementation of IMPEP for materials programs reviews of Regional offices and Agreement States. It also proposed an annual one-day meeting with each Agreement State during the intervening years between IMPEP reviews. SECY-97-054 provided two new policy statements and final implementing procedures. The implementing procedures address: (1) Proposed 274b Agreements with States, and (2) the process that staff will follow to determine when a Commission regulation or program element should be adopted as a legally binding requirement by an Agreement State.

#### DISCUSSION:

##### 1. Maintaining Frequent Contact with Agreement States

Frequent contact between NRC and Agreement States occurs routinely through: (1) the informal practice of exchange of information (conducted primarily by NRC Regional State Agreements Officers and Agreement State counterparts); (2) the issuance of about 100 Annual All Agreement State letters by the Office of State Programs; (3) monthly conference calls among NMSS, OSP, and the Organization of Agreement States Executive Board; (4) NRC staff attendance at the Annual All Agreement States meeting and the Annual Conference of Radiation Control Programs Directors (CRCPD) meeting; (5) NRC representation on CRCPD committees; (6) the use of NRC and Agreement State Joint Working Groups; and (7) reporting, by Agreement States, of Agreement State licensee reportable events to NRC and subsequent NRC analysis.

In addition, staff has developed two new procedures to further enhance and maintain frequent contact with Agreement States. These procedures, entitled "Annual Meetings With Agreement States Between IMPEP Reviews" and "Agreement State Projects Officers," were drafted and shared with the Agreement States for their input, review, and comment on April 11, 1997. The staff received eight comments from two Agreement States which were considered as staff finalized the procedures.

The first initiative is directed at maintaining frequent contact with each individual Agreement State for the purpose of assessing each State's program status. This will be accomplished through the use of annual meetings. The procedure provides that staff will conduct annual one-day meetings with each of the Agreement States during any intervening years between IMPEP reviews. The meetings will normally be led by the respective Regional State Agreements Officer (RSAO), and attended by one OSP staff member and Agreement State program representative(s). Topics to be discussed at the meetings include: (1) Agreement State action on previous IMPEP review findings, (2) program strengths and weaknesses identified by the State or NRC, (3) status of recently completed program or policy changes under development including: (a) changes in program staff, (b) program reorganizations, (c) legislative changes, and (d), redistribution of responsibilities, (4) status of NRC or program changes that could impact Agreement States, (5) any internal program audits conducted by the Agreement State, (6) status of all allegations previously referred by NRC to the Agreement State radiation control program for action, and methods used to resolve allegations that have been closed, (7) Nuclear Materials Events Database (NMED) reporting, and (8), the schedule for the next IMPEP review. Information obtained during an annual meeting could alter the schedule for the next IMPEP review or lead to additional correspondence or meetings with the State. A copy of the procedure is provided as Attachment 1.

The second initiative involves identifying specific points of contact (an Agreement State Project Officer (ASPO)) within OSP that will provide back-up staff support to Regional State Agreements Officers, if requested, and serve as an identified OSP point of contact for requests for technical or other assistance from Agreement State staff as needed. Responsibilities of the ASPO include: (1) participate in the Integrated Materials Performance Evaluation Program (IMPEP) reviews of assigned States if the RSAO for that State is not available, (2) together with the RSAO, who serves as the lead, conducts one-day annual management meetings between IMPEP reviews, (3) when requested by the RSAO or Regional management, respond to inquiries and requests from Agreement States when the RSAO and/or backup support personnel in the Regional Office are not available, (4) maintain channels of communication with the RSAO for the assigned Agreement State, (5) maintain channels of communication with assigned Agreement State on issues for which the RSAO is not responsible, (6) request RSAOs to apprise them of activities in an Agreement State that are of a non-routine nature, (7) serve as the OSP point of contact for requests for technical or other assistance from Agreement State staff as needed, (8) coordinate and request assistance from Regional Office and Headquarters staff, as needed, to respond to State requests, (9) for non-Agreement States having an active interest in negotiating an Agreement, has the lead responsibility for negotiation activities upon receipt of a letter of intent from the Governor, and (10) keep abreast of activities in assigned States by review of correspondence, event reports, and regulation promulgation. A copy of the procedure is provided as Attachment 2.

The SRM also directed staff to inform the Commission how it monitors and reviews State actions, including the review of draft regulations, and inform the Commission of any unexpected or significant problems that develop. The IMPEP Agreement State reviews, together with the actions noted above, describe staff's monitoring and review actions. Regulation reviews are addressed in the next section. Staff will continue to inform the Commission of any unexpected or significant problems that develop through appropriate notification mechanisms such as staff notes, memoranda and Commission papers. Two examples of such actions are J. Blaha's July 23, 1997, memorandum on the status of the New Mexico Agreement State Program and H. Thompson's January 7, 1997, memorandum on Recent Information on Envirocare of Utah and the State of Utah.

## 2. Review of Draft and Final State Regulations

The OSP procedure for reviewing State regulations (provided as Attachment 3) was revised and transmitted to all Agreement States for review and comment on April 18, 1997. This procedure provides: (1) guidance to NRC staff on whether differences identified in State regulations are significant, (2) guidance for use by States on preparation and submittal of proposed and final State regulations, and (3) guidance for NRC staff to use in reviewing State regulations. Comments from the Agreement States have been analyzed and the procedure has been prepared in final.

## 3. Review of Revisions to State Regulations Equivalent to 10 CFR Part 20

Given the significance of the new Part 20 rule to both NRC and Agreement State programs, staff is in the process of conducting a detailed review of all Agreement State final Part 20 equivalent rules for compatibility with the Conference of Radiation Control Program Directors Suggested State Regulations (SSR) and 10 CFR Part 20. The review is being accomplished in a two-step

process.

The first step involved a review by Oak Ridge National Laboratory (ORNL), under contract with NRC, to identify any differences or inconsistencies between the SSR and each Agreement State equivalent rule. This step was completed in February 1996. The second part of the review, currently being completed by NRC staff, consists of a review of the differences and inconsistencies identified by ORNL for compatibility and adequacy with 10 CFR Part 20. A letter documenting the review, staff's conclusions, and providing the State a copy of the ORNL review report is completed and dispatched following the review. A representative letter is provided as Attachment 4. In the limited number of cases where compatibility concerns are identified, the State is requested to inform the staff of planned actions to address the concerns within 45 days of the date the letter was issued.

A written OSP plan to complete the Part 20 review was issued June 13, 1997. This plan provides guidance to ensure consistency among OSP staff in their completion of the compatibility analysis of the Oak Ridge National Lab reviews of Agreement States 10 CFR Part 20 equivalent regulations. The plan also prioritizes the reviews according to the current IMPEP schedule in that the equivalent Part 20 regulations for those States which have recently been reviewed under IMPEP and those that are currently scheduled for an IMPEP review are evaluated first. A copy of the current status of the reviews, showing dates completed and due dates, is provided as Attachment 5. To date, reviews of ten Agreement State 10 CFR Part 20 equivalent rules have been completed and letters provided to the State documenting the results of the review. The plan's goal is to have the remaining 26 ORNL reviews completed by the end of the 1997 calendar year.

#### 4. Resource Requirements

The resource requirements for continued implementation of IMPEP, including the one-day annual meeting, are included in the FY 1998 and FY 1999 OSP budgets. The FTE requirement for the annual meetings (about 20 per year) is estimated to be 0.75 FTE and is included in the 3.8 FTE allocated for IMPEP in the FY 1998 and FY 1999 OSP budgets.

Resources for continuation of draft and final reviews of Agreement State regulations are budgeted at 1.5 FTE in both the FY 1998 and FY 1999 OSP budgets. The level of effort required in the first quarter of FY 1998 for completion of the remaining Agreement State 10 CFR Part 20 equivalent rule reviews is included within this budgeted 1.5 FTE effort. The level of effort required for legal assistance in making compatibility determinations for State regulations, including Part 20, is included within the OGC budget for reviewing the adequacy and compatibility of Agreement State Programs (0.4 FTE in FY 1998 and 0.3 FTE in FY 1999). In certain cases (e.g., review of regulations for States negotiating agreements with NRC) NMSS and the appropriate Regional Office also participate in the review of State regulations. The resources for this effort (both NMSS and Regional Office staff) are included within the NMSS budget for Agreement State Activities (3.2 FTE in FY 1998 and 3.4 FTE in FY 1999). NMSS resources are not identified for the Part 20 reviews since these reviews are being conducted by OSP and OGC staff.

#### COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief

The Commissioners

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Financial Officer has reviewed this Commission Paper for resource implications and has no objection.

L. Joseph Callan  
Executive Director  
for Operations

Attachments:  
As stated