

May 28, 2013

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary */RA/*

SUBJECT: REVISED STAFF REQUIREMENTS – SECY-12-0112 – POLICY
STATEMENTS ON AGREEMENT STATE PROGRAMS

The Commission has approved the staff's recommendation to publish draft revisions to the Policy Statement on Agreement State Programs and the Statement of Principles and Policy for the Agreement State Program for public comment, subject to the comments and changes noted below and in the attachments.

Comments should be solicited on the definition of transboundary implications. The staff should include a specific section in the Federal Register that would frame the issues and propose possible alternate definitions for comment. The staff should solicit comments on whether replacing "particular" with "significant and direct," the language used in Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," would be more appropriate and provide additional clarity. The policy statement should retain its current language, until comment has been received and evaluated. Additionally, the staff should solicit comments on whether the definition should include consideration of the movement of goods and services, which has historically been the main factor in determining whether an issue has transboundary implications.

The inserted prohibition on considering any economic factors related to transboundary implications under compatibility Category B is not explained. This revision should be removed and comments solicited on the underlying issue.

The staff should explore whether the Policy Statement should change transboundary implications to align with Item 3 in the Statement of Principles document.

The staff should maintain the 1997 language in the policy statement describing the adoption of compatible regulations. The staff should, however, solicit comments on these sections of the policy statements and provide its analysis of these comments to the Commission in the notation vote paper that will be submitted to request finalization of the policy statements.

On the issue of Compatibility B in the policy statement on adequacy and compatibility, the staff should specifically solicit public comments on the alternative versions of the sentences in question (the 1997 version compared to the proposed revisions).

As a separate matter, the staff should engage the Agreement States to develop a recommendation and implementation plan for whether a performance-based approach for determining compatibility of a State's radiation control program should be developed. States could be afforded the flexibility to use approaches, other than rulemaking, to implement new NRC generated requirements. A performance-based approach would not rely on a requirement to adopt within three years from the effective date of the NRC generated regulations to determine compatibility of a State's program. The staff should provide the recommendation and implementation plan to the Commission for approval.

The staff should engage the Agreement States and provide a recommendation to the Commission on whether a revised set of performance metrics which could replace, supplement, or expand upon the IMPEP program to determine the adequacy of states' radiation safety programs such that both the adequacy and compatibility of the program is measured holistically.

The staff should develop a question to be included in the *Federal Register* notice to seek input on how we might develop a performance-based approach for measuring compatibility and adequacy. Given the current environment of limited resources, it is imperative that the agency, working with our Agreement State partners, be able to develop a clear set of performance based metrics that consider the limitations of the Agreement States Programs and provide increased flexibility without compromising public health and safety.

In addition to the edits to the policy statements, the staff should make conforming changes to the *Federal Register* Notice.

Attachment 1: Changes to the Policy Statement in SECY-12-0112
Attachment 2: Changes to the Statement of Principles in SECY-12-0112
Attachment 3: Changes to the *Federal Register* notice in SECY-12-0112

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes to the Policy Statement in SECY-12-0112

1. On page 1, 1st full paragraph, revise line 6 to read ‘ ... AEA, ~~discontinues~~ **relinquishes** its ...’ Delete footnote 1.
2. On page 2, 1st paragraph under Background, revise line 10 to read ‘ ... to **review** periodically ~~review~~ the ...’
3. On page 3, 1st full paragraph, revise line 1 to read ‘**Section 274 of the AEA requires that Agreement State programs be both “adequate to protect the public health and safety” and “compatible with the Commission’s program.”** In accordance with ...’
4. On page 3, 1st paragraph under Adequacy, revise line 1 to read ‘ ... should **include** ~~consist of~~ those ...’
5. On page 4, paragraph B., revise line 1 to read ‘ ... should ~~periodically~~ conduct ...’
6. On page 5, paragraph 2., revise line 2 to read ‘ ... interest in **promoting an orderly pattern of regulation of** radiation ...’
7. On page 5, paragraph B., revise line 1 to read ‘ ... category to **a small number of** program ...’
8. On page 5, paragraph B., revise last line to read ‘ ... basis. ~~Economic~~ ...’
9. On page 6, revise line 1 from the top to read ‘ ... ~~factors should not be considered.~~ Agreement ...’ The sentence should be deleted, but comments should be solicited on including it.
10. On page 6, paragraph C., the last sentence needs a qualifier. There are limits on how restrictive, before running afoul of other transboundary or compatibility issues.
11. On page 7, 1st full paragraph, 1st sentence, remove proposed changes and return to original text.
12. On page 7, 1st full paragraph, revise line 8 to read ‘ ... as a result ~~them~~.’
13. On page 7, last paragraph, revise line 1 to read ‘ ... will **minimize the number of NRC** ~~identify~~ regulatory ...’

Changes to the Statement of Principles in SECY-12-0112

1. On page 1, 2nd paragraph, delete footnote 1.
2. On page 1, 3rd paragraph, revise line 3 to read ‘ ... State, **relinquishes** ~~discontinues~~ its ...’
3. On page 2, 2nd paragraph, revise line 4 to read ‘ ... to **relinquish** ~~discontinue~~ its’
4. On page 2, 4th paragraph, revise lines 1 and 2 to remove the proposed changes and return to the original text. Revise line 5 to read ‘ ... to ~~periodically~~ review existing Agreement State programs **periodically** to’
5. On page 2, last paragraph, revise line 1 to read ‘ ... responsible ~~for~~ **ensuring** ~~ensure~~ that’
6. On page 3, 1st full paragraph, revise to name the five principles.
7. On page 3, 2nd full paragraph, revise to use the actual principles as published by the NRC.
8. On page 3, 2nd full paragraph, revise lines 10 and 11 to read ‘ ... that ~~best assures safety while considering differing views~~ **minimizes the use of resources** should be adopted. ~~Considering the resources needed to implement that alternative.~~ Regulations’
9. On page 3, last paragraph, revise lines 2 and 3 to read ‘ ... assessed. Rather ~~the expectation is that~~ these principles **should** ~~will~~ be’
10. On page 4, paragraph 2 on Coherent Nationwide Effort should be retained. If there is an issue here, keep the text and solicit for comment on the underlying issue.
11. On page 4, original paragraph 3., delete the last sentence (In addition, the ... culture.)
12. On page 4, last paragraph, revise line 2 to read ‘ ... service, ~~enhanced security of nuclear materials~~ **Category 1 and 2 radioactive sources**, and’
13. On page 6, 1st paragraph in section D., revise line 4 to read ‘ ... determine **whether** ~~that they are~~’
14. On page 6, 3rd paragraph in section D., revise line 1 to read ‘ ... the Commission **NRC** will’
15. On page 7, 1st paragraph under section 1., revise line 2 to read ‘ ... of the **IMPEP** review....’
16. On page 7, 2nd paragraph under section 1., revise line 3 to read ‘ ...of the **IMPEP** review....’
17. On page 11, Section “5. Termination”, move the last sentence of the second paragraph to the end of the first paragraph.
18. On page 12, paragraph G., revise lines 6 and 7 to read ‘ ... NRC **may** ~~offers~~ certain relevant training courses and **notify** ~~notifies~~ Agreement’

Changes to the Federal Register notice in SECY-12-0112

1. On page 1, 1st paragraph, revise line 5 to read ‘ ... materials, ~~safety culture~~, and’
2. On page 5, 1st full paragraph, line 3, delete the extra space after “staff.”
3. On page 6, revise lines 4 and 5 from the top to read ‘ ... revisions ~~to~~ of these policy statements. The’
4. On page 6, 1st paragraph in section III., revise line 1 to read ‘ ... tasked ~~the~~ staff’
Revise line 5 to read ‘However, ~~the~~ staff’
5. On page 7, 1st full paragraph, revise line 3 to read ‘ ... material” ~~to refer to~~ as byproduct.’
Revise line 8 to read ‘ ... construed ~~as an indication~~ that’
6. On page 7, last paragraph, revise line 6 to read ‘ ... define ~~a~~ significant’
7. On page 8, lines 1 through 4 at the top of the page and the 1st full paragraph should restore the original policy language and solicit for comment on the proposed change.
8. On page 8, next to last paragraph, revise line 7 to read ‘ ... used. To ~~impart the concept that security is a necessary component~~ for purposes of’
9. On page 8, delete the last 2 lines (The working ... Safety)
10. On page 9, delete lines 1 through 4 from the top (... Culture Policy ... culture.)
11. On page 9, 1st full paragraph, revise line 3 to read ‘ ... findings ~~to include~~ Options to address performance ~~such as issues include~~’
12. On page 9, last paragraph, revise line 1 to read ‘ ... for a ~~special~~ Federal’
13. On page 9, last paragraph, revise line 4 to read ‘ ... AEA, ~~relinquishes~~ discontinues its’ Delete footnote 2.
14. On page 9, last paragraph, revise line 5 to read ‘ ... areas, ~~allowing~~ to the State Government ~~to assume that authority~~ as’
15. On page 10, 1st full paragraph, revise line 12 to read ‘ ... persons, ~~which~~ that contributes’
16. On page 11, 1st full paragraph, revise line 3 to read ‘ ... 274b., ~~relinquishing~~ discontinuing’
17. On page 12, paragraph 1., revise line 1 to read ‘ ... should consist of ~~include~~ those’
Revise line 9 to read ‘~~Therefore, t~~The overall’ Revise line 11 to read ‘ ... should contain ~~the~~’ Revise line 14 to read ‘ ... State ~~that~~ which appear’
18. On page 13, last paragraph, revise line 3 to read ‘ ... safely ~~and securely~~.’

19. On page 15, last paragraph, revise line 1 to read ' ... category to a small number of program' Delete the sentence in line 2 (The Commission ... number.)
20. On page 16, paragraph C. needs a qualifier.
21. On page 16, paragraph D., revise line 3 to read ' ... elements not assigned a Compatibility A, B, or C D).'
22. On page 17, paragraph E., revise line 2 to read ' ... cannot relinquish discontinue its'
23. On page 22, 1st paragraph under section 1., revise line 6 to read ' ... industry. The Commission believes that the NRC's' Revise line 8 to read ' ... further suggests believes that'
24. On page 23, last paragraph, revise lines 2 and 3 to read ' ... assessed. Rather, the expectation is that these principles should will be'
25. On page 28, 1st full paragraph, insert the following at the end: Under certain conditions Agreement States can also voluntarily return parts or all of its Agreement State program, e.g., Sealed Source and Device evaluations and uranium recovery regulatory oversight (SECY-95-0136).
26. On page 28, last paragraph, revise line 2 to read ' ... the Integrated Materials Performance Evaluation Program (IMPEP). The'
27. On page 29, 1st full paragraph, revise line 1 to read ' ... the NRC Commission will'
28. On page 29, Finding 1, revise line 1 to read ' ... of the IMPEP review'
29. On page 29, Finding 2, revise line 2 to read ' ... of the IMPEP review'
30. On page 36, paragraph H., revise line 1 to read 'Currently, Section'
31. On page 36, last paragraph, delete the sentence in lines 4 through 6 (The NRC also ... compatibility.)
32. On page 36, add a new paragraph at the end of the page to read as follows: The Conference of Radiation Control Program Directors, Inc. (CRCPD) assists its members in their efforts to protect the public, radiation worker and patient from unnecessary radiation exposure. CRCPD's mission, in part, is "to promote consistency in addressing and resolving radiation protection issues." The CRCPD provides a forum for centralized communication on radiation protection matters between the states and the federal government, and between the individual states. One product of this forum is the development of the CRCPD Suggested State Regulations for use by its members. The NRC also reviews Suggested State Regulations for compatibility.