



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

(FSME-13-055, June, Program, Agreement State Programs)

June 7, 2013

ALL AGREEMENT STATES

OPPORTUNITY TO COMMENT ON DRAFT REVISIONS TO THE "POLICY STATEMENT ON ADEQUACY AND COMPATIBILITY OF AGREEMENT STATE PROGRAMS" AND THE "STATEMENTS OF PRINCIPLES AND POLICY FOR THE AGREEMENT STATE PROGRAM" (FSME-13-055)

Purpose: To inform you of an opportunity to comment* on revisions to the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statements of Principles and Policy for the Agreement State Program."

Background: On August 25, 1993, the Commission requested the U.S. Nuclear Regulatory Commission (NRC) staff to recommend improvements to the NRC's Agreement State Program to assure adequate protection of public health and safety. The Commission approved both policy statements on June 29, 1995, but deferred their implementation until all implementing procedures were completed and approved by the Commission. These policy statements became effective on September 3, 1997 (62 FR 46517).

Discussion: A December 2, 2010, Staff Requirements Memorandum (SRM-SECY-10-015) directed the NRC staff to update the Commission Policy Statement on Adequacy and Compatibility of Agreement State Programs and associated guidance documents to include both safety and source security considerations in the determination process. Both the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statements of Principles and Policy for the Agreement State Program" have been updated by working groups made up of NRC and Agreement State representatives, to include such subject matter as security of radioactive materials and to incorporate changes in the NRC policies and practices.

In addition to requesting comments on the revisions made to the policy statements, the NRC is specifically requesting comments on (1) Compatibility Category B in the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (2) consideration of a performance based approach in determining Agreement State compatibility, and (3) performance based metrics in the adequacy determination of an Agreement State program.

* This information request has been approved by OMB 3150-0029, expiration 11/30/2013. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and Information Services Branch (T-5F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects.resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0200), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

The notice announcing the availability of the draft revisions to the policy statements on Agreement State Programs for comment was published in the *Federal Register* (78 FR 33122) on June 3, 2013. A copy of the *Federal Register* notice is enclosed.

The draft revision can also be found in the NRC's Agencywide Documents Access and Management System using the Accession Number ML13093A222. For ease of reviewing the draft revisions, redline-strikeout copies of each policy statement have been enclosed.

The **comment period ends on August 19, 2013**. Please follow the directions in the *Federal Register* for submitting comments. We look forward to receiving your input.

If you have any questions regarding this communication, please contact me at 301-415-3340 or the individual named below:

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Enclosures:

1. *Federal Register* Notice
2. Policy Statement on Adequacy
and Compatibility of Agreement
State Programs redline-strikeout
3. Statement of Principles and Policy For
the Agreement State Program
redline-strikeout

I. **Proposed Revision to Policy Statement on Adequacy and Compatibility of Agreement State Programs.**

Purpose:- PURPOSE:

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~~ byproduct, source, and small quantities of special nuclear material (hereinafter termed "agreement material") as identified by Section 274b. of the AEA. The NRC, by agreement with a State ~~under Section 274 of the AEA~~, relinquishes its regulatory authority in certain areas ~~to and~~ allows the State ~~government~~ Government to assume that regulatory authority, as long as the State program is adequate to protect public health and safety and compatible with the Commission's ~~program.~~¹ program. For the purpose of this Policy Statement, "public health and safety" includes physical protection of agreement material.

Section 274 further directs the Commission to periodically review State programs to ensure compliance with the provisions of Section 274. This Policy Statement presents the ~~Nuclear Regulatory Commission's~~ NRC's policy for determining the adequacy and compatibility of Agreement State programs established ~~pursuant to~~ in accordance with Section 274. This Policy Statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the Commission's regulatory program" as applied to the Agreement State program. The Policy Statement also describes the general framework that will be used to identify those program elements² that Agreement State programs should implement to ~~be adequate to~~ adequately protect public health and safety and to be compatible with the ~~Commission's~~ Commission's regulatory program. For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and/or other legally binding requirements imposed on regulated persons, which contributes to implementation of that program. Finally, the Policy Statement reflects principles discussed in the ~~Commission's~~ Commission's "Statement of Principles and Policy for the Agreement State Program," which should be considered in conjunction with this Policy Statement.

This Policy Statement is solely guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the ~~Atomic Energy Act~~ AEA and other relevant legal authority. ~~Nor does this Policy Statement diminish or constrain the NRC's authority under the AEA.~~ Implementation procedures adopted ~~pursuant to~~ under this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

¹ For the purposes of this Policy Statement the definition of Commission is equivalent to Title 10 of the *Code of Federal Regulations*: Commission means the five members of the NRC or a quorum thereof sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, as amended.

² ~~For the purposes of this Policy Statement, "program element" means any component or function of a radiation control regulatory program, including regulations and/or other legally binding requirements imposed on regulated persons, that contributes to implementation of that program.~~

Background: BACKGROUND:

The terms “adequate” and “compatible” represent fundamental concepts in the Agreement State program authorized in 1959 by Section 274 of the Atomic Energy Act of 1954, as amended (AEA). Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing 274b., relinquishing the NRC’s regulatory authority over certain materials in a State, provided that the State’s program is adequate to protect public health and safety and is compatible, in all other respects, with the Commission’s regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with States in the formulation of standards to assure that State and Commission standards will be coordinated and compatible. Subsection 274j.((1) requires the Commission to review periodically the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274. In other words Therefore, the Commission must review the actions taken by States under the Agreements to ensure that the programs continue to be adequate to protect public health and safety and compatible with the Commission’s program.

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

DISCUSSION:

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.” These separate findings are based on consideration of two different objectives. First Commission’s program.” In accordance with Section 274 of the AEA, an Agreement State program should provide for an acceptable level of protection of public health and safety in an Agreement State (the “adequacy” component). Second, the The Agreement State should also ensure that its program serves an overall nationwide interest in radiation protection (the “compatibility” component). As discussed in more detail below, an “adequate” program should consist of those program elements necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. A “compatible” program should consist of those program elements necessary to meet a larger nationwide interest in radiation protection generally limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications.

Program elements for adequacy focus on the protection of public health and safety within a particular State, whereas while program elements for compatibility focus on the impacts of an Agreement State’s regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Many program elements for compatibility also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying 1. Adequacy

An “adequate” program should include those program elements not required for adequate compatibility but necessary to maintain an acceptable level of protection of public health and compatible programs, or any changes thereto, the Commission will seek the advice of the safety within an Agreement States State. These program elements make up the category Health and will consider such advice in its final decision.

~~Safety.~~ **Adequacy:** An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of ~~source, byproduct, and small quantities of special nuclear material (hereinafter termed "agreement material") as identified by Section 274b. of the AEA.~~ material. The level of protection afforded by the program elements of the NRC's materials regulatory program is presumed to be that which is adequate to provide a reasonable assurance of protection of public health and safety. ~~The~~ Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified below, in Sections A. through E., that the Commission will use to define the scope of its review of the program. The Commission will also ~~will~~ consider, when appropriate, other program elements of an Agreement State ~~which~~ that appear to affect the program's ability to provide reasonable assurance of public health and safety protection. Such consideration will occur only if concerns arise.

A. ~~A.~~ Legislation and Legal Authority

State statutes should:

- 1) Authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the Commission;
- 2) Authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety;
- 3) Authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and
- 4) Be otherwise consistent with applicable Federal statutes, ~~as appropriate, such as Pub. L. 95-604, The Uranium Mill Tailings Radiation Control Act (UMTRCA).~~

In addition, 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 the regulation of agreement material in the State. ~~Specifically, For those items that have significant health and safety implications, the NRC shall identify legally binding requirements that should be adopted by Agreement States should adopt. The NRC expects that there will be a limited number of legally binding requirements based on those of NRC because of their particular health and safety significancesuch requirements.~~ In adopting such requirements, Agreement States should adopt the essential objectives of those of the Commission.

B. ~~B.~~ Licensing

The State should conduct appropriate evaluations of proposed uses of agreement material, before issuing a license, to assure that the proposed licensee's operations can be conducted

safely- and securely. Licenses should provide for reasonable assurance of public health and safety protection in relation to the licensed activities.

C. ~~C.~~ Inspection and Enforcement

The State should periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

D. ~~D.~~ Personnel

The State should be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

E. ~~E. Response to Events~~ Incidents and Allegations

The State should respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

1. Compatibility

A "compatible" program should consist of those program elements necessary to meet a larger nationwide interest in promoting an orderly pattern of regulation of radiation protection. Those program elements are generally limited to areas of regulation involving radiation protection standards and activities with significant transboundary implications. An Agreement State radiation control program is compatible with the Commission's regulatory program when its program does not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. For purposes of compatibility, the State should address ~~categories~~ the following Categories A, B, and C ~~identified below~~:

A. ~~Category A-~~ Basic Radiation Protection Standards

For purposes of this Policy Statement, this category includes ~~"basic radiation protection standards"~~ meaning dose limits, concentration and release limits related to radiation protection in **Part 20 of Title 10 of the Code of Federal Regulations (10 CFR ~~part 20~~)**, that are generally applicable, and the dose limits in 10 CFR 61.41.³ Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and

³ The Commission will implement this category consistent with its earlier decision in the ~~LL~~ low-level waste area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, **ALARA** as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is at least equivalent to that afforded by Commission requirements.

members of the public. Such State standards should be essentially identical to those of the Commission, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with ~~“adequate protection”~~“protection” that take into account permissible balancing considerations such as economic cost and other factors.

B. ~~Category B-~~ - Program Elements with Significant Transboundary Implications

The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications. Agreement State program elements should be essentially identical to those of the Commission.

C. ~~Category C-~~ - Other Commission Program Elements

These are other Commission program elements ~~(e.g., reciprocity procedures)~~ that are important for an Agreement State to have in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding Commission program elements. ~~Agreement State program elements may be more restrictive than Commission program elements; however, they should not be so restrictive as to prohibit a licensed activity.~~

D. ~~Category D-~~ - Program Elements not Required for Compatibility

An Agreement State has the flexibility to adopt and implement program elements ~~based on those of the Commission (other than those identified in A, B, and C above) or other program elements~~ within the ~~State's~~State's jurisdiction that are not addressed by the NRC.

~~All~~, or program elements not required for compatibility (i.e., those NRC program elements not assigned a Compatibility A, B, or C). However, such program elements of an Agreement State relating to agreement material should:

1) Be compatible with those of the Commission (i.e., should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis);

2) Not preclude, or effectively preclude, a practice⁴ in the national interest without an adequate public health and safety or environmental basis related to radiation protection; ~~or and~~

⁴ ~~“Practice”~~ For the purposes of this Policy Statement, “practice” means a use, procedure, or activity associated with the application, possession, use, storage, or disposal of agreement material. The term ~~“practice”~~“practice” is used in a broad and encompassing manner in this Policy Statement, ~~but does not include economic considerations.~~ The term encompasses both general and specific activities involving the use of ~~radioactive agreement materials such as industrial and medical uses and specific activities within a practice such as industrial radiography and brachytherapy.~~

3) Not preclude, or effectively preclude, the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety.

E. ~~E~~-Category NRC - Areas of Exclusive NRC Regulatory Authority

These are program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the *Code of Federal Regulations*. However, an Agreement State may inform its licensees of ~~certain of~~ these NRC provisions through a mechanism that is appropriate under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority ~~pursuant to them as a result~~.

SUMMARY AND CONCLUSIONS:

Summary and Conclusions

To foster and enhance a coherent and consistent nationwide program for the regulation of agreement material, the Commission encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the Commission. However, the fact that an Agreement ~~State's~~ program is compatible with that of the Commission does not affect that ~~State's~~ obligation to maintain an adequate program as described in this Policy Statement.

By adopting the criteria for adequacy and compatibility as discussed in this Policy Statement, the Commission will provide Agreement States a broad range of flexibility in the administration of individual programs. ~~In doing so~~ Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the Commission allows Agreement States to fashion their programs so as to reflect specific State needs and preferences, ~~recognizing the fact that Agreement States have responsibilities for radiation sources in addition to agreement material~~.

The Commission will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. ~~At the same time, The expectation is that these~~ requirements will be limited. Requirements in these compatibility categories ~~will~~ allow the Commission to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The Commission believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for coordinated and compatible regulation of agreement material across the country.

Topics for Additional Comment.

The NRC is requesting additional comments on key topics in response to direction received from the Commission on the development of both Policy Statements (SRM-SECY-12-0112, "Policy Statements in Agreement State Programs"). Specifically, the NRC is seeking comments on the following topics:

1. Policy Statement on Adequacy and Compatibility of Agreement State Programs, Item 1.B. Compatibility Category B

a) To clarify the meaning of a “significant transboundary implication,” the NRC is proposing to define a significant transboundary implication as “one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis.” However, the NRC recognizes that the use of the word “particular” can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of “significant transboundary implication” and whether the word “particular” should be replaced with the phrase “significant and direct.”

b) Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the Policy Statement.

c) The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders, Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.

d) The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundary implications, should be considered in the definition of significant transboundary implication.

e) The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.

f) The NRC is requesting comments on alternative versions of wording regarding what types of program elements will be assigned a Compatibility Category B designation as well as how limited in number these will be. The original Policy Statement published in 1997 stated, in part: “The Commission will limit this category to a small number of program elements (e.g., transportation regulations and sealed source and device registration certificates) that have significant transboundary implications.” The Working Group proposed keeping the language in the 1997 version of the Policy Statement; however, some believed that this statement could be interpreted to imply that the Commission is limited in its ability to assign rules in this compatibility category. Therefore, alternative language was proposed as follows: “The Commission will limit this category to program elements that have significant transboundary implications. The Commission expects that these will be limited in number.” Some members of the working group disagreed with this alternative language and believed that the original language should be retained. The details of this discussion are in Enclosure 3 of SECY-12-0112, “Policy Statements on Agreement State Programs.” In summary, some members of the Working Group believed that the original language in the 1997 version of the Policy Statement was not intended to dictate the Commission’s authority but rather was to remind those staff proposing designations of compatibility B to the Commission for consideration that program elements of this designation should be few as opposed to many and should involve only significant transboundary implications. Additionally, by removing the distinction that there should be a small number of program elements, it deemphasizes the idea that Agreement States should be given flexibility when addressing the majority of program elements necessary for a compatible program.

2. Policy Statement on Adequacy and Compatibility of Agreement State Programs, Item. Summary and Conclusions

The NRC is requesting comments on alternative versions of wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. This language would cover all

regulatory requirements as compatibility category A, B, and C. (Agreement States are required to adopt regulatory requirements listed as Health and Safety to ensure their program is adequate to protect public health and safety, but not for compatibility purposes). In the third paragraph under "Summary and Conclusions" of the original Policy Statement published in 1997, it stated, in part: "The Commission will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility." The Working Group proposed keeping this sentence as written; however, some members of the Working Group believed that that this sentence could be interpreted to imply that there is a requirement that the Commission minimize such requests to Agreement States, rather than a statement that reflects the expectation that situations justifying such requests will not arise frequently. The sentence was revised as follows: "The Commission will identify regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. The expectation is that these requirements will be limited." Some members of the Working Group disagreed with this revision and believed that the original language should be retained. The details of this discussion are in Enclosure 3 of SECY-12-0112, "Policy Statements on Agreement State Programs." In summary, some members of the Working Group believed that the original text places emphasis on the effort to minimize unnecessary burden on the Agreement States' means to accomplish the same goals as the NRC. Additionally, the suggested changes do not encourage careful consideration as to whether there are other possible options to meet the same intended goal.

3. Performance Based Approach for Determining Compatibility

Currently, Agreement States are afforded some flexibility to use approaches other than rulemaking, such as license conditions or orders, to implement requirements. The NRC staff is seeking additional input on whether a performance-based approach for determining compatibility of an Agreement State's radiation control program should be developed. Agreement States could be afforded additional flexibility to use other approaches to implement requirements. A performance-based approach would not rely on a requirement to adopt within 3 years from the effective date of the NRC regulation in order to determine compatibility of an Agreement State program. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation and an implementation plan to provide to the Commission for approval.

4. Adequacy Determinations of Agreement State Programs

The NRC staff is seeking additional input on whether: (1) a revised set of performance metrics could be used to replace, supplement, or expand upon IMPEP in determining adequacy of an Agreement State's radiation control program; and (2) a single holistic determination can be made that would accurately reflect the overall adequacy and compatibility of a program. Given the current environment of limited resources, it is imperative that the NRC be able to develop a clear set of performance based metrics that consider the limitations of an Agreement State program and provide increased flexibility without compromising public health and safety. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation or series of recommendations for Commission approval.

Proposed Revisions to Statement of Principles and Policy for the Agreement State Program.

A. ~~4. Purpose:~~ Statement of Principles and Policy for the Agreement State Program

PURPOSE:

The purpose of this Statement of Principles and Policy for the Agreement State Program is to clearly describe the respective roles and responsibilities of the ~~U.S. Nuclear Regulatory Commission (NRC)~~ and States in the administration of programs carried out under Section 274 of the ~~Atomic Energy Act~~ AEA of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of nuclear materials.

This Policy Statement addresses the Federal-State interaction under the ~~Atomic Energy Act to:~~ (AEA:

1) ~~Establish~~to establish and maintain agreements with States under Section ~~274(b)~~274b. that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of byproduct, source, and small quantities of special nuclear material; and (2) ensure that post-agreement interactions among the NRC and Agreement State radiation control programs are coordinated ~~and~~, compatible ~~and that Agreement State programs~~, and continue to provide adequate protection of public health and safety.

Section 274 of the AEA provides for a special Federal-State regulatory framework for the control of byproduct, source, and small quantities of special nuclear material as identified by Section 274b. of the AEA. The NRC, by agreement with a State, relinquishes its authority under Section 274 of the AEA over practices involving some or all of these materials. The material over which the State receives regulatory authority under such agreements is hereinafter termed "agreement material."

The NRC and Agreement State radiation control programs maintain regulatory oversight for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of nuclear materials as an integral part of their health and safety mission as it relates to minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes these enhanced security measures.

This Policy Statement establishes principles, objectives, and goals that the Commission expects will be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and that should be achieved in the administration of these programs.

This Policy Statement is intended solely as guidance for the Commission and the Agreement States in the implementation of the Agreement State program. This Policy Statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this Policy Statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority. Implementation procedures adopted pursuant to this Policy Statement shall be consistent with the legal authorities of the Commission and the Agreement States.

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~~2. Statement of Legislative Intent:~~ **STATEMENT OF LEGISLATIVE INTENT:**

The ~~Atomic Energy Act of 1954~~AEA did not initially specify a role for the States in regulating the use of nuclear materials. Many States were concerned as to what their responsibilities in this area might be and expressed interest in seeing that the boundaries of Federal and State authority were clearly defined. This need for clarification was particularly important in view of the fact that although the Federal ~~government~~Government retained sole responsibility for protecting public health and safety from the radiation hazards of byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had been borne for many years by the States.

Consequently, in 1959 Congress enacted Section 274 of the ~~Atomic Energy Act~~AEA to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to ~~discontinue~~relinquish its regulatory authority over the use of these materials and for assumption of this authority by the States. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, ~~and~~ the export and import of nuclear materials, ~~and matters related to common defense and security.~~

In considering the legislation, Congress recognized that the Federal ~~government~~Government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the Commission to provide training and other services to State officials and employees. However, in rendering this assistance, Congress did not intend that the Commission would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

In order to relinquish its authority to a particular State, the Commission must find that ~~the~~ program is compatible with the Commission's program for the regulation of ~~radioactive~~agreement materials and that the State program is adequate to protect public health and safety. In addition, the Commission has an obligation, pursuant to Section ~~274(i)~~274j. of the ~~Act~~AEA, to review existing Agreement State programs periodically to ensure continued adequacy and compatibility. Section ~~274(i)~~274j. of the ~~Act~~AEA provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Section ~~274(i)~~274j. In these cases, the Commission must offer the State reasonable notice and opportunity for a hearing. In addition, the Commission may temporarily suspend all or part of an agreement in the case of an emergency situation.

~~A.B.~~ **G. Principles of Program Implementation and Program Assessment**

The NRC is responsible for ensuring that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the control of agreement material. The basic elements of such regulatory programs include principles of good regulation in program administration and the ability to assess program performance on a consistent and systematic basis; the ability to ensure adequate protection of public health and safety including security of these nuclear materials; compatibility in areas of national interest; and sufficient flexibility to accommodate local needs and conditions. Each of these elements is reflected and addressed in specific sections of this Policy Statement.

1. Good Regulation Principles

In 1991, the Commission adopted the "Principles of Good Regulation" to serve as a guide to both agency decision making and to individual behavior as NRC employees. There are five Principles of Good Regulation: independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, appropriate, and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The Commission believes that the NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. The Commission further believes that such principles may be useful as a part of a common culture that the NRC and the Agreement States share as co-regulators. Accordingly, the Commission encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program.

~~Regulatory decisions and actions should be developed and implemented in an open and publicly credible manner and should be able to withstand scrutiny. Such scrutiny should be welcomed by the regulator. The regulator should be independent and impartial in its actions, and this should be clearly evident. Regulations and regulatory decisions should be based on assessments of the best to achieve independence nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available information-facts and opinions must be sought openly from affected licensees and other interested individuals and organizations, as well as on the best available knowledge from research and operational experience. Significant decisions, for example, a change in enforcement policy, should be members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information and must be documented explaining the rationale for such decisions with reasons explicitly stated.~~

Nuclear regulation is the public's business and it must be transacted publicly and candidly. The public should must be informed about and have an the opportunity for early involvement in significant to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory program decisions-activities. The highest technical and managerial competence is required and must be a constant agency goal. The NRC must establish means to evaluate and continually upgrade its regulatory capabilities.

Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the alternative that best assures safety while considering differing views should be adopted, considering the option which minimizes the use of resources needed to implement that alternative. Regulatory decisions should be made without undue delay.

Regulations should be necessary, and appropriate, to assure safety, and should be clear, coherent, logical, and practical. Regulatory actions should be fully consistent with regulations and agency goals and objectives whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations or other legally binding requirements and good public policy and should be promptly, fairly, and decisively administered so as to lend stability and predictability into the nuclear operational and planning and implementation of radiation control programs.

Failure to adhere to these principles of good regulation in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. All involved should welcome expressions of concern that indicate a program may not be operating in accordance with these principles and revise their program to more completely reflect these principles.

It is not intended that these principles of good regulation be established as formal criteria against which the NRC and Agreement State programs would be assessed. Rather, the expectation is that these principles will be incorporated into the day-to-day operational fabric of the NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of the NRC and Agreement State materials program managers and staff in the self-assessment of their respective programs and to use in the establishment of goals and objectives for the continual improvement of their respective programs. Deficiencies identified during the conduct of the NRC Region and Agreement State formal program performance reviews may indicate that the program is not adhering to these principles of good regulation. The organization being assessed should factor the need for these principles into its actions to address identified deficiencies.

2. ~~2~~—Coherent Nationwide Effort

The mission of the NRC is to assure that civilian use of nuclear materials in the United States is carried out with adequate protection of public health and safety. NRC acknowledges its responsibility, shared with the Agreement States, to ensure that the regulatory programs of the NRC and the Agreement States collectively establish a coherent nationwide effort for the

control of ~~AEA materials~~ agreement material. The basic elements of such regulatory programs include the ability to ensure adequate protection of public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, the ability to assess program performance on a consistent and ~~systematic~~ nationwide basis, and principles of good regulation in program administration.

~~Each of these elements is reflected and addressed in specific sections of this Policy Statement.~~

3. Adequate to Protect Public Health and Safety

The NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs controlling the ~~use~~ safe and secure use of ~~AEA~~ agreement materials. Accordingly, the NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety.

4. Compatible in Areas of National Interest

The NRC and the Agreement States have the responsibility to ensure that consistent and compatible radiation control programs are administered. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. They should ~~be~~ not only ~~be~~ effective and cooperatively implemented by the NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services, ~~security of Category 1 and 2 radioactive sources~~, and safety reviews for the manufacture and distribution of sealed ~~sources~~ sources and devices ~~sold nationwide~~. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of the NRC and each Agreement State to evaluate the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety.

5. Flexibility

With the exception of those compatibility areas where all programs should be essentially identical, to the extent possible, Agreement State radiation control programs for ~~AEA~~ agreement materials should be provided with flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. However, the exercise of such flexibility should not preclude, or effectively preclude, a practice authorized by the ~~Atomic Energy Act~~ AEA, and in the national interest. That is, a State would have the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequacy are still met and compatibility is maintained, and the more stringent requirements do not preclude or effectively preclude a

practice in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

B.C. ~~D.~~ New Agreements

Section 274 of the ~~Atomic Energy Act~~AEA requires that once a decision to ~~seek~~request Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and 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. This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the ~~State's~~State's enabling legislation, the radiation control regulations, a narrative description of the State ~~program's~~program's policies, practices, and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the *Federal Register* to provide an opportunity for public comment. After consideration of public comments, if the Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

C.D. ~~E.~~ Program Assistance

The NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into agreements and to help them prior to the assumption of regulatory authority. Following assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC ~~can~~may provide training opportunities and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. The NRC ~~would~~may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and limited enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC, ~~the or other~~ Agreement States, they are encouraged to do so. In addition, the NRC and Agreement States will keep each other informed about relevant aspects of their programs. The NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. Agreement States should provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

If an Agreement State experiences difficulty in program administration, the Commission would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the ~~State's~~State's ability to discharge its responsibility to continue to ensure adequate protection of public health and safety. Under certain conditions Agreement States can also voluntarily return part or all of its Agreement State program, e.g., Sealed Source and Device evaluations and uranium recovery regulatory oversight (SECY-95-0136).

D.E. ~~F.~~ Performance Evaluation

Under Section 274 of the ~~Atomic Energy Act of 1954~~ AEA, as amended, the Commission retains authority for ensuring that Agreement State programs continue to provide adequate protection of public health and safety. In fulfilling this statutory responsibility, ~~the~~ NRC will ~~provide oversight of~~ periodically evaluate Agreement State radiation control programs to ~~ensure that they determine whether the programs~~ are adequate and compatible prior to entrance into a Section ~~274(b)~~ 274b. agreement and ~~that ensure~~ they continue to be adequate and compatible after an agreement ~~is becomes~~ effective.

The Commission, in cooperation with the Agreement States, ~~will establish~~ established and ~~implement~~ implemented the Integrated Materials Performance Evaluation Program (IMPEP). The IMPEP is a performance evaluation ~~program to provide~~ process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement. ~~Performance indicators are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program. The IMPEP process employs a Management Review Board (MRB), composed of senior NRC managers and an Agreement State Liaison to make a determination of program adequacy and compatibility.~~

As a part of ~~this~~ the performance evaluation process, the ~~Commission~~ NRC will take any necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include: ~~(1) Periodic assessments more frequent IMPEP reviews of Agreement State radiation control programs against established review criteria; (2) and provision of assistance to help address weaknesses or areas needing improvement within an Agreement State radiation control program requiring improvement, to the extent permitted by NRC resources; (3) placing a State on a probationary status for serious program deficiencies that require heightened. Enhanced oversight; (4) temporary, suspension of an agreement and reassertion of NRC regulatory authority in an emergency if an Agreement State program experiences any immediate program difficulties preventing the State from continuing to ensure adequate protection of public health and safety; and (5) suspension, or termination of an agreement and reassertion of NRC regulatory authority if the Agreement State program experiences difficulties that jeopardize the State's ability to continue to ensure adequate protection of public health and safety may be considered for serious program deficiencies or to continue to maintain a compatible program emergencies. The basis for NRC's~~ NRC's actions will be based on a well-defined and predictable process and a performance evaluation program that will be consistently and fairly applied.

E.F. ~~G.~~ Levels of Agreement State Program Review Findings

The following discussion outlines the nature of ~~the~~ NRC findings regarding the ~~NRC's~~ NRC's Agreement State review process.

1. Adequacy

Finding 1--Adequate To Protect Public Health and Safety and (or not) Compatible

If the NRC finds that ~~an~~ Agreement State program has met all of the ~~Agreement State program~~ IMPEP review criteria or that only minor deficiencies exist, the ~~Commission~~ NRC

would find that the ~~State's Agreement State's~~ program is adequate to protect public health and safety. ~~If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.~~

Finding 2--Adequate, but Needs To Protect Public Health and Safety with Improvement and (or not) Compatible Needed

If the NRC finds that ~~aan Agreement~~ State program protects public health and safety, but is deficient in meeting some of the IMPEP review criteria, the NRC may find that the ~~State's Agreement State's~~ program is adequate, ~~but needs with~~ improvement needed. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, the NRC may also find that the program is adequate ~~but in need of with~~ improvement-- needed.

Finding 3--Not Adequate to Protect Public Health and Safety

If the NRC finds that an Agreement State program is significantly deficient in some or all of the review criteria, the NRC would find that the Agreement State's program is not adequate to protect public health and safety.

2. Compatibility

Finding 1--Compatible

If the NRC determines that ~~aan Agreement~~ State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. ~~If the NRC determines that a State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, i.e., creates conflicts, gaps, or duplication in regulation, the program would be found not compatible.~~

Finding 3--Inadequate to Protect Public Health and Safety and (or not) 2--Not Compatible

~~If the NRC finds that a State program is significantly deficient in some or all of the review criteria, the NRC would find that the State's program is not adequate to protect public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible. If the NRC determines that a~~ If the NRC determines that an Agreement State has a program that disrupts the orderly pattern of regulation among the collective regulatory efforts of the NRC and other Agreement States, (i.e., creates conflicts, gaps, or duplication in regulation), the program would be found not compatible.

H--NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above ~~determinations-findings~~. The appropriate action will be determined on a case-by-case basis by ~~NRC management~~.

~~Letters~~

~~In all cases, subsequent~~the MRB. Subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management. ~~In the event that~~

If the NRC ~~determinesfinds~~ that a State program is adequate and compatible, no further action would be required, except a response by the State to any ~~suggestions or recommendations~~. ~~In the case where minor deficiencies are noted or areas for improvement are identified, the State would be requested to describe their proposed corrective action. If the corrective action appears appropriate, no further NRC action is required. If additional clarification of the corrective actions is needed, additional correspondence may be necessary recommendations.~~

~~Follow-up Reviews~~

~~In the event that deficiencies~~ If serious performance issues are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting ~~program deficiencies~~. ~~If, during follow-up reviews, it is shown that the State has taken effective corrective actions, a letter finding the State adequate and compatible would be provided~~those issues. Circumstances that can lead to more frequent contact between the NRC and the Agreement State program include the following: identification of serious program deficiencies, previously identified deficiencies that have gone uncorrected for a significant period of time, and/or deficiencies in adopting required compatibility program elements.

~~Probationary Status~~

~~Circumstances~~ If findings of subsequent reviews show ~~that can lead to~~the State has taken appropriate corrective actions and that these actions have shown a sustained improvement in performance, the MRB will determine whether the status of an Agreement State program ~~being placed in a probationary status~~ may be moved to another level of oversight. If the MRB finds that all deficiencies have been corrected, it may determine that the Agreement State program is adequate and/or compatible.

Options to address serious performance issues ~~include~~ one or more of the following actions: monitoring, heightened oversight, probation, suspension, and termination.

~~Monitoring~~

Monitoring is an informal process that allows the NRC to maintain an increased level of communication with an Agreement State Program through periodic (usually bimonthly) calls between the NRC and State managers/staff. Monitoring is implemented in ~~cases where the Commission finds that program weaknesses exist regarding the adequacy and/or compatibility of an Agreement State's in a program yet the~~ have resulted in, or are likely to result in, less than satisfactory performance for one or more performance indicators. Monitoring may be considered based on results of a routine IMPEP review, a follow-up IMPEP review, a periodic meeting or other interaction with the Agreement State program. In cases where one or more

performance indicators remain less than satisfactory or further degraded, the MRB will consider placing a State on Heightened Oversight.

1. Heightened Oversight

Heightened Oversight is a formalized process that allows the NRC to maintain an increased level of communication with an Agreement State usually through monthly calls between the NRC and State managers/staff. Heightened Oversight is implemented in cases where significant program weaknesses are identified, but are not ~~so~~ determined to be serious ~~as enough~~ to find the program inadequate to protect public health and safety, ~~cases where an Agreement State on heightened oversight.~~ In addition to the monthly calls, a State placed on Heightened Oversight is required to submit a Program Improvement Plan describing actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The Program Improvement Plan allows the NRC to monitor the actions being taken and the implementation schedule for those actions that address the weaknesses identified based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program. If programmatic weaknesses are serious enough to find the program inadequate to protect public health and safety, or if weaknesses continue throughout the period of heightened oversight, the MRB may elect to make a recommendation to the Commission to place the Agreement State on probation.

2. Probation

Probation is a formalized process, requiring Commission approval and notification to the Agreement State's governor, which allows the NRC to maintain an increased level of communication with an Agreement State program. Probation is considered in cases where the State's program is found to be not adequate to protect public health and safety, or not compatible with the NRC's program. An Agreement State may also be placed on probation when it ~~has not addressed weaknesses identified in previous reviews and cases where the NRC determines that a State program has been late in adopting required compatibility program elements and significant disruption in the collective nationwide efforts to regulate AEA materials has occurred.~~ In all cases where the NRC was not confident that the State would address the program deficiencies in an expeditious and effective manner, the Commission may place the State program on probation previously identified program weaknesses. The process allows the NRC to monitor the actions being taken by the State to correct the identified weaknesses and the implementation schedule for those actions.

~~As a result of placing a State program on probation~~ Probation would include all the requirements for Heightened Oversight previously described. In addition, the NRC would communicate its findings to a higher level of State management. ~~Notice~~ Written notification of ~~such~~ probationary status would be sent to the Governor of the State, a notice published in the *Federal Register*, and a ~~letter would be~~ press release issued ~~notifying the Governor of the State.~~ Notice would also be given to the State's Congressional delegation, the appropriate Congressional committee, ~~all licensees within the affected Agreement State(s), and all Agreement and non-Agreement States.~~ A copy of the letter to the Governor would be placed in the Public Document Room and a press release would be issued.

~~Once a State program is placed on probation, the NRC would heighten its oversight of the program. This would include obtaining commitments from the State in the form of a~~

~~management plan to describe actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The NRC would increase observation of State program activities under the agreement to assure adequate protection of public health and safety. If requested and in accordance with terms agreed to by the parties, the NRC would consider providing, the NRC may provide~~ technical support for the maintenance of the regulatory program. The probationary ~~period would last for a specified period of time. This period would not~~ normally be ~~more than one year, but could be extended based on extenuating circumstances or less.~~ At the end of that time, if the State has not addressed the deficiencies, the NRC ~~would~~may extend the probationary period or institute suspension or termination proceedings.

~~1.3.~~ **Suspension**

Section 274j. of the ~~Atomic Energy Act~~AEA gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the ~~Act~~AEA. In cases where ~~the Commission finds that~~ program deficiencies ~~related to either adequacy or compatibility~~ are such that the Commission must take action to protect public health and safety, or if the program has not complied with one or more of the requirements of Section 274 of the ~~Act~~AEA, the Commission ~~would~~may suspend all or part of its agreement with the State. In cases where a State has failed to respond in an acceptable manner during the probationary period, suspension ~~would~~may be considered.

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the *Federal Register*. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j.~~(2)~~ of the ~~Act~~AEA also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed or is unable to take necessary action within a reasonable time.

In cases where the Commission decides to suspend the agreement, the NRC would communicate its findings to a higher level of State management. ~~Notice would be published in the Federal Register, and a letter would be issued notifying the Governor of the State. Notice would also be given to the Department of Labor and the appropriate Congressional committees. A copy of the letter to the Governor would be placed in the Public Document Room and a press release would be issued.~~The NRC would issue an order temporarily suspending all or part of the 274b. agreement and an order to State licensees

notifying them of the temporary suspension of all or part of the 274b. agreement. Written notification of suspension would be sent to the Governor of the State, a notice published in the *Federal Register*, and a press release issued. Notice would also be given to the State's

Congressional delegation, the appropriate Congressional committee(s), and all Agreement and non-Agreement States.

2.4. Termination

Section 274j. of the ~~Atomic Energy Act~~AEA gives the Commission authority to terminate all or part of its agreement with a State if such termination is required to protect public health and safety, ~~if the State program has not complied with one or more of the requirements of Section 274 of the AEA (e.g., is found to be not compatible with the Commission's program for regulation of agreement materials), or by State request.~~ When the Commission finds such significant program deficiencies, the Commission would institute formal proceedings to terminate its agreement with the State. ~~In cases where the State has requested termination of the agreement, notice and opportunity for a hearing are not necessary.~~

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination. ~~In cases where the State has requested termination of the agreement, notice and opportunity for a hearing is not necessary.~~

Also, notice of the proposed termination will be published in the *Federal Register*. There may be cases where termination will be considered even though the State program has not been placed on probation.

I. Program Funding

~~Currently,~~ Section 274 of the AEA does not allow ~~federal~~Federal funding for the administration of Agreement State radiation control programs. Section 274 of the AEA permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with the NRC, ~~however.~~ However, it is the NRC policy not to fund the establishment of new Agreement State programs. Regarding training, given the importance in terms of public health and safety of having well trained radiation control program personnel, the NRC ~~offers~~may offer certain relevant training courses and ~~notifies~~notify Agreement State personnel of their availability.

F.G. J. Regulatory Development

The NRC and Agreement States will cooperate in the development of ~~both new and revised~~ regulations and ~~policy~~policies. Agreement States will have early and substantive involvement in the development of ~~new~~ regulations affecting protection of public health and safety and of ~~new policy~~policies affecting administration of the Agreement State program. ~~Likewise, the NRC expects to have the States provide it with early and substantive involvement in the development of new Suggested State Regulations.~~ The NRC and Agreement States will keep each other informed about their individual regulatory requirements (e.g., regulations or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources.

K. Program Evolution

The Conference of Radiation Control Program Directors, Inc. (CRCPD) assists its members in their efforts to protect the public, radiation workers, and patients 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 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.

H. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of **AEA** Agreement materials to identify specific changes that should be considered based on experience or to further improve overall performance and effectiveness. The changes considered may include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

Topics for Additional Comment.

1. Performance Based Approach for Determining Compatibility

Currently, Agreement States are afforded some flexibility to use approaches other than rulemaking, such as license conditions or orders, to implement requirements. The NRC staff is seeking additional input on whether a performance-based approach for determining compatibility of an Agreement State's radiation control program should be developed. Agreement States could be afforded additional flexibility to use other approaches to implement requirements. A performance-based approach would not rely on a requirement to adopt within 3 years from the effective date of the NRC regulation in order to determine compatibility of an Agreement State program. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation and an implementation plan to provide to the Commission for approval.

2. Adequacy Determinations of Agreement State Programs

The NRC staff is seeking additional input on whether: (1) a revised set of performance metrics could be used to replace, supplement, or expand upon IMPEP in determining adequacy of an Agreement State's radiation control program; and (2) a single holistic determination can be made that would accurately reflect the overall adequacy and compatibility of a program. Given the current environment of limited resources, it is imperative that the NRC be able to develop a clear set of performance based metrics that consider the limitations of an Agreement State program and provide increased flexibility without compromising public health and safety. In a separate Commission vote paper, the NRC staff will use input from comments received on this topic to create a recommendation or series of recommendations for Commission approval.