

**REVISION TO POLICY STATEMENT ON
"ADEQUACY AND COMPATIBILITY OF AGREEMENT STATE PROGRAMS"
AND
MANAGEMENT DIRECTIVE 5.9, "ADEQUACY AND COMPATIBILITY
OF AGREEMENT STATE PROGRAMS"**

CHARTER

PURPOSE

In accordance with Commission direction in Staff Requirements Memorandum (SRM) to SECY-10-0105, dated December 2, 2010, the purpose of this working group is to review and revise (1) the Commission Policy Statement on Adequacy and Compatibility of Agreement State Programs (62 FR 46517, dated September 3, 1997), and (2) Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" to include both safety and source security considerations.

BACKGROUND

This project is an outcome of the Commission decision on SECY-10-0105, "Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device," dated August 10, 2010. From the summary of this SECY paper, staff indicated that there have been increased concerns regarding the safety and security of devices that are currently possessed under the U. S. Nuclear Regulatory Commission's (NRC's) general license regulatory program, including issues raised in reports from a U.S. Senate subcommittee and from the U.S. Government Accountability Office, in petitions from the Agreement States, and through NRC review of the GL regulatory program. In response to these concerns, the staff considered whether a limit should be placed on the quantity of byproduct material allowed in generally licensed devices, to improve accountability and control over these sources and reduce the potential for the aggregation of lower activity sources to higher activity levels. Staff provided recommendations to the Commission in addressing these concerns. Staff also requested approval to revise 10 CFR § 31.5(a), 10 CFR § 31.5(c)(13)(i), and 10 CFR § 31.6 from compatibility designation B to C. These sections of the regulations involve general licenses.

In Staff Requirements Memorandum (SRM) to SECY-10-105, dated December 2, 2010, the Commission disapproved publication of the final rule but did approve revising the compatibility categories from Compatibility Category B to C for the 10 CFR §§ 31.5 and 31.6.

The Commission also directed the 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. Additionally, the staff was directed to perform an analysis of any transboundary impacts to regulated entities, particularly those operating on a multi-state basis, and recommend corrective actions if needed.

MEMBERSHIP

The NRC/Agreement State working group will operate under NRC Management Directive 5.3, "Agreement State Participation Working Groups," dated August 22, 2007. The lead organization for the working group is the Office of Federal and State Materials and Environmental

Management Programs (FSME). The working group will be co-chaired by an NRC staff member from the Agreement State Programs Branch (ASPB) and a representative from the Organization of Agreement States (OAS). The membership is:

Torre Taylor, NRC/FSME/ASPB, Co-Chair
David Walter, OAS, Co-Chair
Leira Cuadrado, NRC/FSME/MSSA/ASPB
Lisa London, NRC/OGC
Monica Orendi, NRC/RI, RSAO
Alice Rogers, CRCPD

Duncan White, Branch Chief, MSSA/ASPB, will serve as Management Advisor. Kathleen Schneider, Senior Project Manager, MSSA/ASPB, will be a resource to the working group. Merri Horn, NRC/FSME/DILR, will also be a resource to the working group.

A Steering Committee will not be established for this working group. In accordance with Management Directive 5.3, the managers and OAS Board members who concurred on the working group Charter or their designee will be responsible for providing guidance and support on this working group's activities. FSME management will review and approve the work products prior to providing them to the Commission. The work products will be provided to Agreement States and the public for comment.

OBJECTIVES

The main objectives of the working group follow:

1. Review and finalize the Charter for the working group.
2. Review and revise the following two documents in accordance with Commission direction in Staff Requirements Memorandum (SRM), dated December 2, 2010, "SECY-10-0105, Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device:"
 - a. Commission Policy Statement on Adequacy and Compatibility of Agreement State Programs (62 FR 46517, dated September 3, 1997).
 - b. Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" based on revisions to the Policy Statement.
3. The working group will:
 - a. Better define and explain what "significant transboundary implications" means.
 - b. Address the direction in the SRM by,
 - i. Revising the Policy Statement to "incorporate both safety and source security considerations."
 - ii. Evaluating the final analysis on any transboundary impacts and determine if any changes are needed in the Policy Statement based on this analysis [This analysis is being conducted by other staff with a report due to the Commission in June 2012. This working group should have access to a draft analysis late 2011/early 2012].

- c. Update the Policy Statement for current practices, organizational structure, and other identified programmatic needs.

SCHEDULES

The first working group meeting was held in July 2011. The working group will develop the final schedule within the constraints of Commission directed deadlines.

A draft revision of the Policy Statement will be prepared by January 2012 and sent to the Agreement States for a 60 day comment period. NRC staff will prepare a paper to the Commission based on the findings of the working group's review and revision of the Policy Statement and Agreement State comments. The draft Policy Statement will be submitted to the Commission for approval for publication for public comment by June 15, 2012.

The revision of Management Directive 5.9 will begin once the draft Policy Statement is with the Commission.

There will be 2-3 public meetings while the Policy Statement is published for public comment. The staff estimates that the draft Policy Statement will be published in August 2012, for a 90 day public comment period. Once the comment period closes, the working group will resolve public comments and prepare the final Policy Statement and revisions to Management Directive 5.9 beginning in November 2012. NRC staff will provide the final paper to the Commission, providing the final Policy Statement and Management Directive, no later than December 2013.

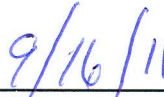
LEVEL OF EFFORT

The level of effort for this project will depend on the number of items identified that need revision in the Policy Statement and the Management Directive. The staff estimates that the level of effort during the initial stages of revising the Policy Statement between July and December, 2011 will require each person to spend approximately one week per month. The level of effort will increase in 2012-2013 during the (1) revision of Management Directive 5.9, and (2) public comment period when public meetings will be held. Additionally, the level of effort will increase in resolving public comments and finalizing the documents. For this stage of the project, the staff estimates that the level of effort will increase to approximately 1 ½ weeks for each person. The co-chair from NRC will be dedicated almost 100% of the time.

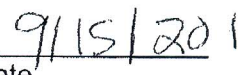
MEETINGS

Meetings of the working group are pre-decisional deliberations and will not be held as public meetings.


James Luehman, Acting Division Director, MSSA


Date


Cheryl Rogers, Chair
Organization of Agreement States


Date