

Dissenting Opinion for Changes Made to the Policy Statement on Adequacy and Compatibility

During the concurrence process changes to the policy statement were made as part of office concurrence. Half of the working group members, including both the Organization of Agreement States and Conference of Radiation Control Program Directors representatives, disagreed with two of the changes.

The first change is under the Compatibility Section in the discussion of Category B. The working group originally proposed to keep the first sentence of the discussion as it was written when the policy was first published in 1997: "The Commission will limit this category to a small number of program elements that have significant transboundary implications." It was felt that this statement could be interpreted to imply that the Commission is limited in its ability to use this category. The sentence was revised 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." Those working group members that disagree with the revision do so for the following reasons. 1) The sentence as written in 1997 was not intended to dictate the Commission's authority but rather was to remind those staff proposing designations of compatibility 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. 2) The Agreement States feel that the original wording from the 1997 policy statement provides for a good faith effort on the part of the Commission when determining program element compatibility. 3) 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. 4) The text change is outside the objectives listed in the working group's charter.

The second change is under the Summary and Conclusions Section. The working group originally proposed to keep the first sentence in the third paragraph as it was written when the policy was first published in 1997: "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." Similar to the first proposed change, it was felt that this statement 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." Those working group members that disagree with the required change do so for the following reasons. 1) 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. This allowed and encouraged flexibility to use the most efficient means to meet the goals of a program element. 2) The suggested changes do not encourage careful consideration as to whether there are other possible options to meet the same intended goal. The emphasis in the required change is placed from the program element to the expectation that there will be a minimal number of times to use such careful consideration. 3) The contention that the original wording limits the authority of the Commission has not been an issue since the Policy was first written. As stated in the Purpose Section:

“This Policy Statement is solely guidance for the Commission and Agreement States to implement the Agreement State Program.” The Commission is not bound to any specific number in that the terms “small” and “minimize” are not defined anywhere as a number, and are strictly up to the interpretation of the Commission. This text was incorporated into the 1997 version of the policy statement only to stress the importance in the decision making process.