

# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: BRIEFING ON RESULTS OF AGREEMENT STATE  
COMPATIBILITY WORKSHOP

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON RESULTS OF AGREEMENT STATE  
COMPATIBILITY WORKSHOP

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Monday, August 30, 1993

The Commission met in open session,  
pursuant to notice, at 10:00 a.m., Ivan Selin,  
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
FORREST J. REMICK, Commissioner  
E. GAIL de PLANQUE, Commissioner

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## STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

RICHARD BANGART, Director, Office of State Programs

FRANK COSTANZI, Deputy Director, Division of  
Regulatory Applications, RES

SHELDON SCHWARTZ, Deputy Director, Office of State  
Programs

FRED COMBS, Chief, Operations Branch, NMSS

FRANCIS CAMERON, Office of the General Counsel

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

The Commission is meeting at this time to receive a briefing from the staff primarily on the results of the Agreement State Compatibility Workshop that was held at the end of July here in Washington.

The issue of compatibility is one that's been of significant concern to the Commission for some time and, in fact, depending on how broadly it's defined, the question of compatibility can be thought of as one of the critical questions in defining the relationship between the Agency and the agreement states.

The staff has been developing a more comprehensive compatibility policy. We don't really have a formal compatibility policy, we have a framework for implementing compatibility policy. So, the desire has been to go directly to the question of compatibility and have the staff prepare some options to which the Commission can respond. Given the centrality of this issue and the broad range of opinions as to what our compatibility policy might consist of, the timing of this presentation is really

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1 very good.

2 Commissioners, do we have any opening  
3 remarks?

4 Mr. Taylor?

5 MR. TAYLOR: Good morning. With me at the  
6 table, to my left, Dick Bangart. I believe this is  
7 his first Commission meeting as the Director of the  
8 Office of State Programs.

9 To his left, Frank Costanzi from the  
10 Office of Research, Fred Combs from State Programs --  
11 no, NMSS, and Shelly Schwartz from State Programs and  
12 ~~Chip~~ Cameron from the Office of the General Counsel.

13 The briefing this morning will be given by  
14 Shelly Schwartz.

15 Shelly?

16 MR. SCHWARTZ: Thank you very much, Jim.  
17 Mr. Chairman.

18 (Slide) Could I have the first viewgraph,  
19 please?

20 Here's an outline of the information I  
21 will be providing you during this briefing. The  
22 briefing is geared to provide the background and  
23 actions leading up to the July workshop. Also have  
24 included some information on where I believe the  
25 working group is headed.

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1 (Slide) Next viewgraph, please.

2 On January 22nd, the Commission directed  
3 the staff to develop a policy on compatibility, not  
4 including low level waste and involve the Agreement  
5 States.

6 (Slide) Next viewgraph, please.

7 A working group was created by the Deputy  
8 Executive Director for Operations, Hugh Thompson, and  
9 the working group was charged with the following.  
10 That is to develop a paper discussing various issues  
11 associated with the scope of a policy on  
12 compatibility, to participate in discussions on the  
13 issues with those constituencies, to develop  
14 compatibility policy for agreement states and the EDO,  
15 as well as provide guidance on compatibility policy  
16 criteria development.

17 (Slide) Next viewgraph, please.

18 The working group membership, as Mr.  
19 Taylor allowed, are the members here at the table. We  
20 also had representatives from the Organization of  
21 Agreement States who provided information to us as the  
22 working group deliberated.

23 Mr. Chairman, you might remember that you  
24 did meet with the group earlier this year. I will  
25 note that Wayne Kerr is in the audience here.

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1           We had additional support from Terry  
2       Frazee from the State of Washington, who helped us  
3       draft some of the papers, and Gerald Parker. Jerry is  
4       a retired Assistant Commissioner of Health from the  
5       State of Massachusetts, and others on the staff.

6           (Slide) Next viewgraph, please.

7           As charged, the working group developed an  
8       issues paper. The draft of the paper was discussed at  
9       a public meeting with the states in May. It was  
10      revised and the final paper was used as the basis for  
11      our discussions at the July workshop. This final  
12      paper was presented to the Commission -- was delivered  
13      to the Commission on July 20th of this year.

14          These are the major headings in the issues  
15      paper. Under "Preamble," the summary and background  
16      sections of the paper, the principle issues in this  
17      section are adequacy to protect the public health and  
18      safety is an overriding requirement for the NRC and  
19      the agreement states and as partners in regulation the  
20      states need early and substantive involvement in  
21      rulemaking.

22          Under the "Basics," the major issues  
23      discussed are uniform standards are necessary,  
24      interstate commerce cannot be impeded and three years  
25      should be enough time for the states to adopt

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1 regulations.

2 Under the item "Issue of Flexibility," in  
3 the paper, the major question posed in this discussion  
4 is should the states be required to adopt regulations  
5 for activities not being conducted in the state. And  
6 examples used are having Part 61 in the regulations  
7 when, in fact, a state is not under their compact to  
8 be a host state, and there are some other examples.

9 Under "Communications," the issue of let's  
10 make sure that we have common reporting thresholds  
11 from the sense of common reporting thresholds from the  
12 agreement state licensees and from NRC licensees and  
13 that those reports also be reported from the agreement  
14 states to the Nuclear Regulatory Commission.

15 Also, the requirements to share technical  
16 information. Right now it's almost anecdotal and some  
17 of the technical information that is shared between  
18 them on the agreement states, the 30 programs for  
19 regulation, and there has to be more rigor in that as  
20 well.

21 Under "Implementation," again the issue  
22 was raised about the state involvement in rulemaking  
23 and we did touch on the issue of what status, if any,  
24 should be given the Conference of Radiation Control  
25 Program Directors' suggested state regulations for the

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1 control of radiation.

2 Lastly, the issue dealt with in the paper  
3 was what are the legal, policy and health and safety  
4 bases for reasserting NRC authority in the agreement  
5 states. OGC prepared the legal analysis that was  
6 presented in the paper.

7 (Slide) Next viewgraph, please.

8 The next two slides, I believe, are the  
9 major issues raised at this first public meeting that  
10 we had using the draft issues paper for discussion.  
11 This was May 20th at the public meeting we held with  
12 states on discussion of new rulemakings. Attending  
13 this meeting were states and members of the regulated  
14 community from the industrial and the medical. I  
15 don't think there was any real public participation in  
16 that meeting.

17 I won't cover all of these, but I'll be  
18 ready to discuss any one if anybody would like to.

19 On the first one, there was agreement that  
20 radiation protection uniform standards are necessary,  
21 but again there was no clear definition as to what  
22 that means with respect to the scope of those uniform  
23 standards.

24 On the next page --

25 COMMISSIONER de PLANQUE: Could you

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1 elaborate just a little more on that? Where is the  
2 confusion or where are the different sides? What's  
3 the range?

4 MR. SCHWARTZ: Well, the range is that the  
5 agreement states believe that there should be core  
6 elements of uniformed standards for curie, for maximum  
7 permissible dose and those kinds of things. And also  
8 there's agreement that they do not want to impede  
9 interstate commerce so things go across the board.  
10 From the industry side, they agree on a core, but they  
11 want a larger core. They really would like to have  
12 more and more standardization so they can sell their  
13 products across the board interstate, so they don't  
14 have to try and understand every single state's  
15 different requirements.

16 So, in sitting in a room with people at  
17 this point in time, we didn't force consensus, we just  
18 tried to understand what some of these differences  
19 are.

20 COMMISSIONER de PLANQUE: So, in this  
21 sense, you're using the term "radiation protection  
22 standards" rather loosely.

23 MR. SCHWARTZ: Yes. Yes.

24 COMMISSIONER de PLANQUE: Okay. And then  
25 it's what fits into that category.

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1 MR. SCHWARTZ: What fits into the  
2 category. There's some people would say, and I'll use  
3 the example of low-level waste manifest. There's some  
4 people believe that that is necessary for basic  
5 radiation protection in order for us to know what's  
6 going on in low-level waste. Others believe, no, it's  
7 more administrative for gathering information.

8 COMMISSIONER de PLANQUE: Okay. So,  
9 you're really talking about the range of requirements  
10 that need to go in there, not the definition of the  
11 word "standard" per se.

12 MR. SCHWARTZ: That's correct.

13 COMMISSIONER de PLANQUE: Okay.

14 COMMISSIONER ROGERS: Before you turn away  
15 from that Shelly, do you think there's any way in  
16 which people could somehow or other actually look at  
17 specific requirements rather than a general argument  
18 about whether standards should be broad or narrow, but  
19 where they could agreement standard by standard,  
20 whether we can agree on that standard? We're  
21 concerned about the rest of them and then sort of  
22 attack this on a piece by piece basis to get to a  
23 point where instead of arguing philosophy they're  
24 arguing specifics.

25 MR. SCHWARTZ: Commissioner Rogers, I do

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1 believe that people would sit around a table and say,  
2 "We have to do it. It's important for us to do.  
3 Let's sit down and decide what it is that we mean by  
4 basic radiation protection standards or also what do  
5 we need for making an adequacy and compatibility  
6 determination?" People will do that.

7 COMMISSIONER ROGERS: Because, you know,  
8 you can argue forever about philosophy and never get  
9 anywhere.

10 The bullet here that says that criticize  
11 NRC tendency to prefer a rigid standard for  
12 compatibility as appearing to run counter to a  
13 philosophy of enhanced recognition of states'  
14 innovation, what kinds of innovation are hampered by  
15 a set of fixed standards?

16 MR. SCHWARTZ: The notion of that  
17 statement --

18 COMMISSIONER ROGERS: It seems to me it  
19 goes the other way around.

20 MR. SCHWARTZ: Yes.

21 COMMISSIONER ROGERS: Once you know  
22 exactly what you're dealing with, then you become  
23 innovative in thinking of how to implement it rather  
24 than the other way around. You know, rigid, that's a  
25 pejorative term apparently, but let's say fixed

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1 standard. How does that interfere with innovation?

2 MR. SCHWARTZ: The word "rigid standard"  
3 was going again maybe a little loosely beyond actual  
4 standards. It's really in how we evaluate the  
5 program. Clearly, if we have a checklist evaluation  
6 or we just fill in the boxes, then we're having clone  
7 programs where people are not really thinking and  
8 being innovative. That really is what came to light--

9 COMMISSIONER ROGERS: Okay. So the word  
10 "standard" here really is not used in the same sense  
11 as the first bullet at all.

12 MR. SCHWARTZ: That's correct.

13 COMMISSIONER ROGERS: It's really how to  
14 judge compatibility. Okay.

15 MR. SCHWARTZ: Yes.

16 COMMISSIONER REMICK: A better word might  
17 be "criteria."

18 COMMISSIONER de PLANQUE: Yes, or  
19 "requirements."

20 MR. SCHWARTZ: Yes.

21 COMMISSIONER ROGERS: Right.

22 COMMISSIONER de PLANQUE: Before you turn  
23 the page, fourth bullet from the bottom, "National  
24 standards should either be uniform," again how are you  
25 using standards there and could you give us a little

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1 more background on that one, what's the problem?  
2 Fourth bullet.

3 MR. SCHWARTZ: Oh, I see. Maybe we're  
4 both looking at --

5 COMMISSIONER REMICK: Yes. He has the old  
6 slides.

7 COMMISSIONER de PLANQUE: Oh, I'm sorry.

8 MR. SCHWARTZ: That's okay. It's the  
9 first slide.

10 COMMISSIONER de PLANQUE: The updated  
11 version.

12 MR. SCHWARTZ: Now we can turn the page.

13 COMMISSIONER de PLANQUE: Is this the one  
14 you meant to delete?

15 CHAIRMAN SELIN: No, can't turn the page  
16 yet. Let me go back to the point that Commissioner  
17 Rogers raised before, before we move on.

18 Is this sentence supposed to be what is  
19 perceived by the states or is this an objective  
20 statement, one NRC policy is namely our tendency to  
21 prefer rigid standard for compatibility?

22 MR. SCHWARTZ: This is as perceived by the  
23 states of gathered comments at this workshop.

24 CHAIRMAN SELIN: I see. Because my view  
25 is not consistent with that. I think we ought to have

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1 a relatively limited number of places where we require  
2 strict compatibility and then mean it as opposed to  
3 have a very long list but then not act as if we really  
4 care about them. There should be -- I guess the  
5 phrase is a core set of places and they shouldn't just  
6 be standards. I'm almost as interested in compatible  
7 definitions as compatible standards because standards  
8 tend to require -- we're basically saying even if  
9 yours is the only state in the world, you still have  
10 to do certain things. Definitions are, in a sense,  
11 arbitrary, but we have to be able to give a state of  
12 the union on radiation health that is relatively  
13 consistent across all 50 states, territories, et  
14 cetera, and definitions almost by nature have a  
15 certain arbitrariness to them, but we just have to  
16 find a way to describe certain things using the same  
17 terms to mean the same thing throughout the country  
18 and require an adherence to these definitions, not  
19 because the individual state needs those for health  
20 and safety, but because we need to be able to compare  
21 or evaluate overall or just describe pieces.

22 But if that's a state tendency, then  
23 presumably your narrative will get into how this was  
24 corrected at the workshop, now that they understand  
25 exactly what we are interested in.

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1 Now turn the page.

2 MR. SCHWARTZ: Yes. I'm sorry. I  
3 apologize if we have --

4 COMMISSIONER de PLANQUE: That's all  
5 right.

6 MR. SCHWARTZ: We're looking at different  
7 viewgraphs.

8 COMMISSIONER de PLANQUE: Well, wherever  
9 that bullet is.

10 MR. SCHWARTZ: (Slide) That's the top  
11 bullet of the next viewgraph, please.

12 "National standards should either be  
13 uniform from agency to agency or should be clearly  
14 identified as NRC standards." Again, it's the states'  
15 interest in saying different federal agencies have  
16 different standards and when a standard is talked  
17 about as needed for adequacy or compatibility, that it  
18 should be identified as an NRC standard.

19 I can't defend the position of just trying  
20 to report what we heard.

21 COMMISSIONER de PLANQUE: I was just  
22 looking for where the source of the confusion was.

23 MR. SCHWARTZ: I think -- these are my own  
24 thoughts -- that confusion is when they go to their  
25 licensees and say, "Well, this is this requirement."

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1 You say, "Well, I have this requirement from someone  
2 else at the same time and the two don't match. Which  
3 one do you want me to follow?"

4 COMMISSIONER de PLANQUE: Okay.

5 COMMISSIONER ROGERS: Well, isn't it clear  
6 when we are requiring something that has not had  
7 necessarily a total agreement that it is an NRC  
8 standard? Isn't it pretty clear right now?

9 MR. SCHWARTZ: Yes, I think it's clear.

10 The second one on that viewgraph noted as  
11 certification of inspectors, there was a comment that  
12 it would be very useful to have NRC inspectors and  
13 also agreement inspectors to have the same competency  
14 with respect to training. NRC uses a Manual Chapter  
15 1245 and the agreement state programs have a  
16 requirement for a bachelor's degree and some training,  
17 but there's not the same kind of rigor.

18 The last bullet on that page about  
19 agreement state licensees should get fair notice of  
20 rulemaking, the comment runs to that when we go out  
21 for a proposed rule that will be a matter of  
22 compatibility, that the agreement state licensees may  
23 not be notified that there is that proposed rule in  
24 the street and then may not have the adequate time to  
25 get their comments into the rule. Then it shows up as

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1 a matter of strict compatibility and they have had the  
2 opportunity to give comments.

3 NMSS currently has a newsletter they put  
4 out to the licensees that at least notify them. We  
5 have in the Office of State Programs, I think,  
6 provided a proposed rule to the agreement states to  
7 send to their licensees, but that's very resource  
8 intensive. So, we're looking at electronic ways of  
9 perhaps covering that.

10 COMMISSIONER ROGERS: Now, these are  
11 published in the Federal Register.

12 MR. SCHWARTZ: They're all published in  
13 the Federal Register.

14 COMMISSIONER ROGERS: So, that's not a  
15 satisfactory way of informing them.

16 MR. SCHWARTZ: Yes, and also there are  
17 industry organizations also that are well aware of the  
18 regulations.

19 CHAIRMAN SELIN: When a rule is published,  
20 is there an indication about whether it will or will  
21 not be a matter of compatibility?

22 MR. SCHWARTZ: Yes, it is.

23 (Slide) Next viewgraph, please.

24 The next two viewgraphs get into the  
25 compatibility workshop that was conducted July 26th,

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1 27th. At the workshop Commissioner Remick offered  
2 some remarks and did participate for a good part of  
3 the afternoon. I appreciate that.

4 At this workshop we had representatives of  
5 the agreement states and non-agreement states. We had  
6 representatives of the Sierra Club, American College  
7 of Nuclear Physicians. I won't go through everybody,  
8 but we did have a very wide ranging -- Ohio Citizens  
9 for Responsible Energy, Health Physicist Society,  
10 State Attorney General of the State of Massachusetts,  
11 and licensees of agreement state at NRC.

12 We tried to get some state legislators at  
13 the meeting, but they were having their annual meeting  
14 in San Diego at the time and I think they probably  
15 chose to go there instead of coming to Rockville.

16 CHAIRMAN SELIN: July in San Diego is more  
17 attractive than July in Washington.

18 MR. SCHWARTZ: I guess so.

19 COMMISSIONER de PLANQUE: Shelly?

20 MR. SCHWARTZ: Yes?

21 COMMISSIONER de PLANQUE: Was this the  
22 complete list of attendees?

23 MR. SCHWARTZ: I don't think so. That was  
24 the list of --

25 COMMISSIONER de PLANQUE: Okay. It

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1       sounded like you were --

2               MR. SCHWARTZ:     That was the list of  
3       invitees. I do have a fuller list. There are about  
4       50 people that participated and I don't think that  
5       goes up that high.

6               If we accomplished anything at this  
7       workshop I think there was improved communication  
8       between and among the regulated community, the members  
9       of the public and at least a discussion of what we  
10      meant by compatibility and not meant by compatibility  
11      and uniformity.

12              CHAIRMAN SELIN:   Mr. Schwartz, could you  
13      just stop there? Having gone through the workshop, is  
14      it your impression that materials regulation is an  
15      area where there's considerable inconsistency or  
16      duplication from the federal government to the states?  
17      In other words, do the agreement states or their  
18      licensees have a problem reconciling FDA or EPA or HHS  
19      regulation with our regulation?

20              MR. SCHWARTZ:   I got the impression from  
21      hearing from the industry that there was concern with  
22      respect to NRC and various agreement states,  
23      regulations not being together, not being uniform from  
24      the sense --

25              CHAIRMAN SELIN:   I didn't ask about NRC

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1 versus the agreement states. I asked about the  
2 federal level coming down, whether it's to agreement  
3 states or directly to licensees. There was an earlier  
4 remark that seemed to show some concern going in, that  
5 the federal regulators were duplicative or  
6 inconsistent. Having gone through the workshop, was  
7 that a major theme or was it more that the NRC --  
8 well, was that a major theme?

9 MR. SCHWARTZ: No, it was not a major  
10 theme. It was not a major theme.

11 CHAIRMAN SELIN: The question of  
12 consistency between our regulations and the agreement  
13 states is, in fact, the subject of the workshop. But  
14 this other question, I was not under the impression  
15 that there was a big problem.

16 MR. SCHWARTZ: There isn't a big problem.  
17 If I touch on non-agreement material, that's where the  
18 states are opining that it's a need to recognize that  
19 the Atomic Energy Act materials were only 15 to 20  
20 percent of their total business in the regulation of  
21 radioactive materials. With FDA regulating it one  
22 place and the manufacturer, the states pick up the  
23 regulatory authority at the user level. But I didn't  
24 sense that there was any problem there.

25 COMMISSIONER REMICK: One other thing that

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1 did come up, Shelly, if I recall, comments by  
2 industry, cases where one state has done a very  
3 thorough job perhaps in reviewing a medical  
4 application and so forth and other states not  
5 accepting that and taking a very long time for certain  
6 drugs therefore to be administered where they might  
7 have been used earlier. One of those comments is the  
8 fact that one state presumably does a thorough job in  
9 reviewing and so forth, other states did not generally  
10 accept that.

11 MR. SCHWARTZ: There is that and it's more  
12 also in the area of the non-agreement materials where  
13 they established through the radiation conference  
14 what's called a licensing state concept that only a  
15 few states are part of that would allow the states to  
16 share their reviews. That was also part of that  
17 discussion.

18 COMMISSIONER REMICK: If I recall that  
19 discussion, the comment was being placed in a form  
20 that when something is in a non-agreement state and  
21 the NRC approves, it's applicable to all those states.  
22 But in the case of agreement states, if one state  
23 approves, they might have to get, presumably, 28 other  
24 approvals.

25 CHAIRMAN SELIN: This is on a device or --

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1 COMMISSIONER REMICK: This was medical.  
2 This was a medical application.

3 MR. SCHWARTZ: I remember -- I think it  
4 was the gentleman from Amersham that was raising that.

5 COMMISSIONER REMICK: Amersham is the one  
6 that raised it, yes.

7 MR. SCHWARTZ: And I remember it was  
8 dealing with the strontium device that was being  
9 licensed to try to be marketed by them and I don't  
10 remember the details of that.

11 COMMISSIONER REMICK: But there was a case  
12 where it wasn't exactly what the Chairman was talking  
13 about, an inconsistency among agency requirements.  
14 This was basically a fact that one agreement state not  
15 necessarily accepting approval by another agreement  
16 state. From the industry side, it means that they  
17 would basically -- if they wanted to have it annulled,  
18 then all agreement states would have to go through a  
19 number of state approvals. It can be very time  
20 consuming, costly and keeps the product from the  
21 customer.

22 CHAIRMAN SELIN: Just as part of my  
23 education, my understanding of the process was that if  
24 the state of manufacture licenses a device and it gets  
25 on the NRC register, then it's licensed in all states,

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1 agreement or otherwise. Secondly, getting on the NRC  
2 register isn't that hard for a device to do. Is that  
3 correct?

4 MR. SCHWARTZ: That's correct the way I  
5 understand it.

6 CHAIRMAN SELIN: Is that not applicable to  
7 the Amersham example?

8 MR. SCHWARTZ: I don't think so. It had  
9 something to do with other than a sealed source and  
10 device.

11 CHAIRMAN SELIN: I see.

12 MR. SCHWARTZ: Commissioner, I really  
13 don't remember, but he was raising a big issue with  
14 respect to his plea for uniformity across the board so  
15 he wouldn't have to do that. But I don't remember the  
16 exact details of that. But it wasn't a sealed source  
17 of device, as I remember.

18 COMMISSIONER REMICK: I don't think so.

19 COMMISSIONER de PLANQUE: It wasn't  
20 something that would ordinarily show up on the  
21 register?

22 MR. SCHWARTZ: That's correct.

23 COMMISSIONER de PLANQUE: Okay.

24 MR. BANGART: Mr. Chairman, I might add  
25 that I know that the Subpart I issue is of concern,

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1 that depending on how it's resolved there may be  
2 differences obviously in regulation between ourselves  
3 and EPA for airborne effluence.

4 CHAIRMAN SELIN: Right.

5 MR. SCHWARTZ: (Slide) Next viewgraph,  
6 please.

7 Again, I'll only highlight a few of the  
8 issues. Some of them, I think, we've already talked  
9 about.

10 The second issue on that page, the  
11 radiation protection standards should be uniform,  
12 however no clear definition. The states want  
13 flexibility to address local conditions and needs and  
14 they agreed to a uniform core, but the size and shape  
15 of that core is still things that we need to discuss.  
16 And the industry wants uniformity, a larger core.

17 The public interest groups want the  
18 ability for the local government to go beyond federal  
19 or state requirements. They want uniform standards,  
20 but they'd also like the ability to go beyond the  
21 federal standards.

22 COMMISSIONER de PLANQUE: Could you  
23 elaborate a little more on the rationale presented for  
24 that?

25 MR. SCHWARTZ: Well, the representative

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1 of the Sierra Club, Judith Johnsrud, made a number of  
2 statements that while we agree that you have the  
3 adequate or basic standards to protect public health  
4 and safety and the environment, there may be special  
5 conditions that we think are important for the  
6 population in this particular sector and that we'd  
7 like to go beyond that.

8 COMMISSIONER de PLANQUE: Did they cite  
9 any examples?

10 MR. SCHWARTZ: I didn't get any. It's an  
11 issue I'd like to turn -- perhaps Chip can help  
12 because it sounds like the same theme or a similar  
13 theme that we've been hearing during discussions on  
14 the enhanced participatory rulemaking.

15 Chip?

16 MR. CAMERON: Well, I think that what  
17 Doctor Johnsrud was referring to, the examples that  
18 she gave all had to do with the regulation of low-  
19 level waste disposal, which was outside of the scope  
20 of this new policy. But she kept coming back to that  
21 as the example. And another concept that she stated  
22 is that if the agreement states have the  
23 responsibility for regulating, if they have the  
24 obligation to do that, then they should be allowed to  
25 adjust for local conditions and local conditions is

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1 left unspecified as to whether that's some peculiar  
2 environmental situation or whether it's a public  
3 policy matter. The same types of issues that the  
4 Commission had to grapple with in dealing with the  
5 Pennsylvania and Illinois situation, I think.

6 CHAIRMAN SELIN: Was there any -- yes.  
7 One of the arguments that has been put forward in  
8 favor of agreement state programs is that by accepting  
9 federal standards for AEA-controlled material and then  
10 extending that for non-AEA-controlled sources, you get  
11 a more uniform program. Was there any reflection of  
12 this in the workshop? Was there any sense that  
13 agreement states tend to use the same radiation  
14 standards for linear accelerators or other sources of  
15 radiation that they have to take from our standards  
16 for, say, cobalt devices?

17 MR. SCHWARTZ: I think if there was any  
18 sense it was more from the other materials and not so  
19 much from the machines. We didn't get into a  
20 discussion of the machines, but in other materials  
21 that they had an equal program, going across the board  
22 and the notion of this licensing state concept is that  
23 ergo agreement states who have full authority would be  
24 accepted by the other states when they can do a sealed  
25 source and device review or something like that. But

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1 those states who only have a NARM program and a  
2 machine program still would have to run through a  
3 rather small knot to be qualified to have that product  
4 shipped around the country

5 COMMISSIONER REMICK: Shelly, the one  
6 thing I do remember as I interpret it, they used this  
7 as an argument for why the NRC has to be more  
8 sensitive to their implementation, because when we  
9 impose something to make it uniform they might apply  
10 those same type of things to NARM and so forth and it  
11 might take more time, more thought and so forth. So,  
12 they were, as I understood it, appealing us to be  
13 understanding of the fact that they have a broader  
14 responsibility than just Atomic Energy Act materials  
15 and to make it consistent. It's more complex for  
16 them, takes more time and so forth. I do remember  
17 those views being expressed.

18 MR. SCHWARTZ: Yes. Thank you.

19 COMMISSIONER REMICK: We view things just  
20 from the Atomic Energy Act viewpoint and they have  
21 broader responsibility and make an effort to make it  
22 uniform.

23 MR. SCHWARTZ: And not only from the  
24 programmatic aspects of looking at the Atomic Energy  
25 Act materials in the regulations, but also the notion

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1 of training, the training programs that are put on,  
2 that once a person is trained to do the licensing and  
3 inspection of Atomic Energy Act material, that it's an  
4 easy transfer to other materials in other parts of the  
5 program.

6 Cardelia Maupin handed me a note about  
7 what the gentleman from Amersham -- and he was saying  
8 that although the material was approved in the State  
9 of Illinois, that the State of Texas delayed it  
10 because they wanted to make sure that the proper  
11 surveys were conducted on the material that they were  
12 going to use.

13 MR. CAMERON: And I believe it was the  
14 approval of the use of a drug that the FDA had  
15 approved.

16 COMMISSIONER REMICK: It was used as an  
17 example that they have to go state by state in many  
18 cases.

19 MR. SCHWARTZ: (Slide) Next viewgraph,  
20 please.

21 The July 26th and 27th workshop we also  
22 discussed a number of the same issues that we  
23 discussed in the May 20th and also in the management  
24 meeting that we just had with the agreement states,  
25 some of those same issues were raised. I'll just go

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1 to the next to the last one, since we've had some  
2 discussions on the rest of them, I think.

3 "Make adequacy and compatibility  
4 determinations simpler, not as convoluted." I think  
5 the individual who raised that -- you look at the  
6 policy for becoming an agreement state and a policy  
7 for the biannual reviews of the agreement states and  
8 they just don't match. The biannual reviews seem like  
9 they're more rigorous, there's more going on that we  
10 require the states to do in those biannual reviews  
11 than in the original agreement. So, there was a plea  
12 to make sure to comport the program and make it easier  
13 for folks. The notion of cutting down perhaps the 30  
14 elements to ones that maybe interrelate with each  
15 other and one adds to the other rather than having a  
16 whole bunch of disparate, perhaps, pieces.

17 CHAIRMAN SELIN: The principle should be  
18 very simple. I mean the principle should be that in  
19 order for a state to become an agreement state it must  
20 have a program which is both adequate and compatible,  
21 whatever that means, and it must maintain the program  
22 adequate and compatible. You would think that the  
23 criteria would be the same whether it's for initial  
24 accession to the program or maintenance within the  
25 program. Commissioner Rogers could probably talk to

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1 you about fuzzy logic, about why they're sometimes in  
2 and sometimes out, but they really should stay in the  
3 program as they go along.

4 The idea that they should be consist, I  
5 agree with, but the idea that the review should be  
6 simplified because we make it so easy for a state to  
7 get in, we should make it easily equal for the state  
8 to stay in. That's open to some discussion.

9 Are you going to talk about the last point  
10 because I'd like to talk about the last point.

11 MR. SCHWARTZ: The notion is that it's  
12 kind of a lead-in to one of the options and that is  
13 that by and large everybody in the meeting agreed that  
14 protection of the public health and safety is what  
15 we're about and that talking about compatibility and  
16 compatibility to rules may add to that, but it may  
17 also detract if we spend too much time worrying about  
18 that. That's essentially what that meant.

19 CHAIRMAN SELIN: The point I would like to  
20 make on this one is that our responsibility is  
21 protection of public health and safety throughout the  
22 country and it's possible that we will require of  
23 states steps which have only limited value within that  
24 state but are part of an overall fabric. I have two  
25 examples in mind. The first is reporting definitions,

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1 et cetera. The point I made earlier, that if there  
2 were only one state then they could set the  
3 definitions, but given that there are 50 states they  
4 need to comply with national definitions because  
5 that's part of the national health and safety long-  
6 term reporting leading to better programs, et cetera.

7 The second is that if we find that certain  
8 patterns of, say, training or inspection are called  
9 for to have a very -- you know, a degree of safety and  
10 confidence, it could be the case that a particular  
11 state would argue, "But we've had a very good record  
12 for ten years. Why are you requiring that of us?" and  
13 the answer would be that we have found that on an  
14 overall basis that certain ways of doing inspections,  
15 et cetera, just don't work very well. A given state  
16 is a very small sample. There are very few  
17 misadministrations. There are very few events per  
18 state. So, if you just looked at a single state's  
19 history for a few years you might say, "Well, they  
20 haven't had a problem." But if you look at the  
21 pattern nationwide, you will have to occasionally come  
22 to the conclusion that this is just good practice or  
23 bad practice.

24 But the key point, I think, is the first  
25 point. It has really more to do with definitions and

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1 uniform reporting practice than it has to do with the  
2 actual inspection.

3 MR. SCHWARTZ: (Slide) I'm ready to go to  
4 the next viewgraph, where we're heading.

5 Under the bullet "Near Term," there are  
6 two main headings, commission policy options and  
7 improving the state's opportunities for early and  
8 substantive involvement of rulemaking.

9 Under the options there are probably many  
10 others, but here are three that we've been discussing.  
11 The first one is enhanced status quo, maintaining the  
12 four compatibility divisions as they are today. The  
13 enhancement would be to improve the state's  
14 involvement early and substantively in regulations and  
15 in also discussions on the compatibility  
16 determinations and that we would still continue to  
17 make two separate findings, one for adequacy and one  
18 compatibility.

19 The second option, we develop what is  
20 called -- it's in bow legs, called coordinated  
21 program. That is, it was suggested by a state with  
22 some support and that would say include some  
23 programmatic elements in the overall review of the  
24 agreement state program. For example, states and --  
25 I don't want to make the generality, but some states

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1 before they issue a license to a licensee they want to  
2 make sure that they see that licensee to make sure  
3 that they understand what their obligations under the  
4 license, those kind of programmatic elements, or even  
5 in comporting that licensing classes that the NRC has  
6 with the license -- or the states to the NRC as to the  
7 same classes. Right now the states don't follow the  
8 same numbers with respect to licensing categories.

9 Again under this coordinated program is to  
10 make the review of the state more of a management  
11 audit, not a license audit and rather than as an  
12 inspection of the state.

13 The last item is to --

14 CHAIRMAN SELIN: Before you get off that,  
15 when I read this paper there was one thing I didn't  
16 follow and that's the enhanced status quo. Was there  
17 criticism of the four compatibility divisions? Not  
18 what's in them, but the concept that there are four  
19 divisions?

20 MR. SCHWARTZ: No.

21 CHAIRMAN SELIN: Maybe this is not a very  
22 sophisticated way of looking at it, but it seemed to  
23 me that the idea of having the four compatibility  
24 divisions was independent of the policy. You could  
25 run a more centralized policy, you could run a more

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1 decentralized policy and still have four divisions,  
2 that the question was we don't seem to have a well  
3 expressed policy for deciding what rules fall in which  
4 division, not that we have a four division structure.

5 So, would the idea be under some of these  
6 options you would drop the four compatibility  
7 divisions or would you just have three different sets  
8 of criteria for deciding what falls in which --

9 MR. SCHWARTZ: Under the last option we  
10 would drop the four compatibility divisions and have  
11 one set of uniform, core regulations that would have  
12 a rigid standard for compatibility. You would make  
13 one finding of adequacy and compatibility. If a state  
14 does not have those core elements, whether you say  
15 they're a combination of division 1 or 2 or part of 3  
16 gets into the definition. If you do not have those  
17 core elements, then you're not adequate and you don't  
18 make a separate compatibility finding.

19 So, you give states some flexibility in  
20 some of the other regulations, but at the same time  
21 you have a rigid set of regulations that the states  
22 have to have in place, otherwise we would withhold the  
23 finding of compatibility. That's essentially the  
24 last --

25 CHAIRMAN SELIN: Was the implication of

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1 that that as a practical matter it wouldn't be any  
2 compatibility? In other words, it would really be  
3 just whether the program is adequate or not? In other  
4 words, the number of regulations would be so small  
5 that they would just be things you require for  
6 adequacy like having dose limits and inspection and  
7 training programs, et cetera?

8 MR. SCHWARTZ: It would be small with the  
9 sense of what's required for adequacy and  
10 compatibility because the review would look at the  
11 regulations, the total program under the  
12 compatibility, which would be part of the adequacy  
13 determination.

14 CHAIRMAN SELIN: Let me give you some --  
15 there's some definitions, there's some incident  
16 reporting, et cetera, that we would be hard put to  
17 argue that a given state couldn't have an adequate  
18 program if they didn't follow a national definition or  
19 if they didn't have certain kinds of reports. In  
20 other words, if you just looked at one state and said,  
21 "Are they able to maintain the health and safety of  
22 their citizens without these definitions and without  
23 these reports?" the answer probably would be I guess  
24 so. But nevertheless, if you saw that replicated in  
25 29 states, you would have to say that the ability for

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1 us to make a judgment nationwide or to make some  
2 comparisons from state to state or look at trends with  
3 a reasonable amount of analytical effort would be  
4 severely compromised and therefore the national health  
5 and safety would be compromised.

6 In other words, what I'm saying is it  
7 seems to me that first of all it's in the Atomic  
8 Energy Act. Compatibility is treated differently from  
9 adequacy. Secondly, even if it's an after the fact  
10 attempt to figure out why the framers framed that  
11 concept, that there are things that one would want to  
12 be able to assess an overall agreement state program  
13 that you'd be hard put to justify in an individual  
14 state, but that we would think we needed for our  
15 purposes and for national purposes incompatibility.  
16 Would such items be excluded in that third option?

17 MR. SCHWARTZ: No, they would not. They  
18 would be a subset of things necessary that the  
19 agreement states would to have national reporting and  
20 also the interstate commerce, that the agreement  
21 states would also have in place for them to have the  
22 program running adequately and --

23 CHAIRMAN SELIN: That's a good example.

24 MR. SCHWARTZ: Yes.

25 CHAIRMAN SELIN: The interstate commerce

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1 is another example.

2 MR. SCHWARTZ: Exactly, in order to make  
3 sure that we do have a cohesive national program.

4 CHAIRMAN SELIN: So you're not really  
5 using adequate or compatible, you're just saying we  
6 have a national set of rules and if you're going to be  
7 an agreement state program you need to meet those  
8 rules...

9 MR. SCHWARTZ: That's essentially what  
10 that third option means.

11 COMMISSIONER de PLANQUE: Shelly, I know  
12 there's been a difference of opinion as to whether or  
13 not compatibility is required as an ongoing thing.  
14 Was that discussed at all?

15 MR. SCHWARTZ: At the workshop it was  
16 mentioned that there are a few states who have the  
17 opinion that once you sign the agreement that there's  
18 no obligation to maintain compatibility. We have a  
19 legal opinion --

20 COMMISSIONER de PLANQUE: Going the other  
21 way.

22 MR. SCHWARTZ: -- by the General Counsel  
23 that says that it's not the NRC's opinion, the General  
24 Counsel's opinion.

25 MR. PARLER: I was speaking for myself.

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1 Obviously there are considerable policy matters that  
2 can be taken into consideration when you decide what  
3 has to be done and what does not have to be done and  
4 you can start out going back to what the Congress in  
5 1959 wanted to accomplish. The only thing that I was  
6 addressing in my memorandum, and also in my answer  
7 under oath to Congressman Synar, is that if you looked  
8 at the thing purely as a matter of law, the thing that  
9 I'm talking about is Section 274, whether we had the  
10 authority to require continuing compatibility, the  
11 answer to that under the present Section 274 as  
12 amended is yes.

13 Early during this program, that is  
14 federal/state/agreement state program, and before the  
15 Section 274 was amended on two subsequent occasions  
16 since 1959, the General Counsel of the Atomic Energy  
17 Commission did take a legal position which is contrary  
18 to mine, which appears to be contrary to mine. The  
19 General Counsel in 1963 said that 274 contemplated  
20 cooperation and communications with the agreement  
21 states to try to resolve problems. That is still the  
22 case. That should still be emphasized.

23 The General Counsel in 1963 did not have  
24 to focus precisely on what I had to focus on in 1993  
25 and that is the issue being raised that this Agency

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1 was without authority under 274 to require as a matter  
2 of law compatibility in certain areas if it wanted to.

3 MR. SCHWARTZ: The next bullet, the next  
4 major bullet are the near term and that was improving  
5 opportunities for agreement state early and  
6 substantive rulemaking. Currently we hold two major  
7 meetings with the agreement states, one at the Annual  
8 Conference of Radiation Program Directors Meeting in  
9 the spring and in the fall at the Annual Agreement  
10 States Meeting where Research and others presents  
11 proposed rules to the agreement states and gather  
12 comments. We also have special workshops on  
13 particular rules that we know the agreement states and  
14 us have significant interest in, and at the same time  
15 we mail out to the agreement states copies of proposed  
16 rules before they're published in the Federal Register  
17 for a 45 day comment period. At the same time we put  
18 that in the public document room.

19 We're looking at trying to get into the  
20 21st century and get some electronics here.

21 CHAIRMAN SELIN: Just as an aside, I think  
22 it's important to have a lot of communication and  
23 learn from each other, et cetera, but it's equally  
24 important to make it clear that all parties have the  
25 same access to an opportunity to comment. We can't be

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1 in a position where any group, even a group with which  
2 we guard so closely as agreement states have a kind of  
3 a veto or pre-notification shot at changing these  
4 things significantly. The cooperation and the  
5 communication are essential, but we have to keep up  
6 with putting these things, these documents in the  
7 public document room, making sure that if they're  
8 commented on other parties do as well.

9 MR. SCHWARTZ: And the longer term, the  
10 notion is the viability of national regulatory  
11 standards developed by the Conference of Radiation  
12 Control Program Directors or others. There are a body  
13 of suggested state regulations that are in place  
14 today, but developed by the federal government and the  
15 industry and also the states. It was developed  
16 originally by the Council of State Governments in 1962  
17 and it's been updated by the Conference of Radiation  
18 Control Programs over the years and it covers the full  
19 gamut of radiation protection standards, not only  
20 Atomic Energy Act materials, maybe experienced over  
21 the last 40 years, maybe if we can get into national  
22 consensus standards.

23 COMMISSIONER ROGERS: How different are  
24 the standards of CRPCD from what NRC's requirements  
25 are today?

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1 MR. SCHWARTZ: They're the same, sir,  
2 except they are reformatted to fit into the state  
3 statutes.

4 COMMISSIONER ROGERS: But there's no  
5 difference there?

6 MR. SCHWARTZ: There may be some  
7 differences. I don't want to say they're exactly the  
8 same, but it is --

9 COMMISSIONER ROGERS: But no substantive  
10 difference as far as you're aware?

11 MR. SCHWARTZ: As far as I know there are  
12 no substantive differences between what the NRC --

13 COMMISSIONER ROGERS: Would you take a  
14 look at that very carefully and maybe let us know  
15 where you might see that there are differences if you  
16 look at it again?

17 MR. SCHWARTZ: Certainly.

18 COMMISSIONER de PLANQUE: Can I ask a  
19 question? I think we need to be very careful what we  
20 mean when we use the word "standard," because to some  
21 of us this means a basic radiation standard as we  
22 might have in Part 20. I think in several parts of  
23 the slide it's been used much more loosely to mean  
24 requirements. So, in that previous discussion can I  
25 check if you were both using the same meaning?

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1 MR. SCHWARTZ: Sure.

2 COMMISSIONER de PLANQUE: Were you?

3 CHAIRMAN SELIN: He was and he wasn't.

4 COMMISSIONER de PLANQUE: What were you  
5 thinking of, Shelly? I have the impression you mean  
6 more general requirements.

7 MR. SCHWARTZ: I'm thinking more of  
8 general requirements, the things to do.

9 COMMISSIONER de PLANQUE: But you were  
10 thinking of standards.

11 COMMISSIONER ROGERS: Yes, I'm thinking of  
12 specific --

13 COMMISSIONER de PLANQUE: Yes, that's what  
14 I was afraid of. Okay.

15 COMMISSIONER ROGERS: -- standards.

16 COMMISSIONER de PLANQUE: Do you want to  
17 have that discussion again?

18 COMMISSIONER ROGERS: But you can do it in  
19 two pieces.

20 MR. SCHWARTZ: I can do both, sir.

21 COMMISSIONER ROGERS: Do both, but just  
22 separate the two.

23 COMMISSIONER de PLANQUE: Which one is  
24 first?

25 CHAIRMAN SELIN: One and a half FTE per

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1 100 licensees is not a standard, it's a requirement.

2 MR. SCHWARTZ: Right, that's our  
3 requirement under the -- that's our policy statement  
4 that requires it. That is not included in the --

5 COMMISSIONER ROGERS: No, I'm not looking  
6 for that. I'm looking for what one might regard as  
7 technical standards.

8 MR. SCHWARTZ: Yes. I think you'll find  
9 most of Part 20 in those suggested state regulations.

10 COMMISSIONER REMICK: Most of Part 20 or  
11 the technical radiation protection standards in Part  
12 20. Not all of Part 20 --

13 COMMISSIONER de PLANQUE: Dose limits?

14 MR. SCHWARTZ: Dose limits.

15 COMMISSIONER REMICK: Dose limits, yes,  
16 which is a lot -- Part 20 is a big document.

17 MR. SCHWARTZ: That's correct. Dose  
18 limits, the maximum permissible dose limit, all the  
19 definitions and those kinds of things.

20 COMMISSIONER REMICK: Right.

21 MR. PARLER: Radiation protection  
22 standards for many years, I don't know what it means  
23 now, but to people on the Joint Committee on Atomic  
24 Energy met radiation standards in 10 CFR Part 100 of  
25 the NCRP standards and the international standards and

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1 it was that, I think, that that area that the Joint  
2 Committee in the legislative history, and I informed  
3 the Commission about this in an earlier memorandum  
4 several years ago, expressed the desire that there be  
5 attempts to achieve uniformity.

6 COMMISSIONER REMICK: I certainly agree.  
7 I can't tell you how strongly I feel. There should be  
8 uniformity of the technical radiation protection  
9 standards. I won't go into the many reasons why I  
10 think that's necessary. I think one of our problems,  
11 I agree with Commissioner de Planque, is we're using  
12 different words for different things and I'm not sure  
13 around this table or within the Agency would agree on  
14 what we mean by radiation protection standards. One  
15 way we might start is what do we mean by that. Maybe  
16 we need to come up with better definitions so we can  
17 communicate with one another and agreement states on  
18 what we mean because I think it's giving us difficulty  
19 when we communicate with one another and with others  
20 outside the Agency.

21 I'm not sure we know what we mean when we  
22 say radiation protection standards.

23 MR. SCHWARTZ: I think that, Commissioner,  
24 you did ask that question at the -- when I said all of  
25 Part 20, and everybody shook their heads and said yes,

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1 and they said, "Well, we were just being polite at  
2 this point. We didn't want to get into an argument,"  
3 and when you pressed they said, "No, that's not true."

4 COMMISSIONER REMICK: But Shelly had  
5 mentioned that Part 20 and nobody disagreed and I told  
6 them that I was surprised that nobody disagreed with  
7 his statement that of all of Part 20 would be called  
8 radiation protection standards, certainly parts of it.  
9 They did indicate that they were being -- this was  
10 early on in the meeting, the workshop, and they  
11 indicated they were being polite at that point and  
12 certainly didn't think all of Part 20 should be an  
13 issue of compatibility.

14 COMMISSIONER de PLANQUE: Actually, I  
15 think you've got some reasonably good definitions in  
16 these areas in the issues paper. So, that probably  
17 helps to be strict in our use of the term.

18 MR. SCHWARTZ: (Slide) The last viewgraph  
19 is the schedule for implementation.

20 That ends the full presentation, Mr.  
21 Chairman.

22 I'd like to ask if any of the members of  
23 the working group have anything they'd like to add.

24 Thank you, sir.

25 CHAIRMAN SELIN: Commissioner Rogers?

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1                   COMMISSIONER ROGERS: Yes. Well, I'd like  
2                   to start out by complementing the staff on the issues  
3                   paper. I thought it was particularly well written and  
4                   complete and really touched on the relevant issues and  
5                   presented a balanced and informative discussion on  
6                   those issues. I think the process that's been used so  
7                   far is a very good one and I think that we are moving  
8                   towards a sound basis for a policy. So, I just wanted  
9                   to say that I thought the issues paper was really  
10                  particularly well done.

11                 There are some questions that I have about  
12                 it. Maybe they're minor points, I'm not sure, but I  
13                 did note that -- if you can turn to the issues paper  
14                 because I'm going to focus on that.

15                 I noticed a new phrase on page 4 that  
16                 maybe has been used before but it struck me as just  
17                 slightly different. I wonder whether there was any  
18                 significance to that. I'm looking at the third  
19                 paragraph on page 4, about in the middle of that  
20                 paragraph. The statement is, "The common focal point  
21                 of both the NRC and the agreement states is adequate  
22                 protection of the public health and worker safety  
23                 within the limits of their respective statutory  
24                 authority." That's not the usual catechism that we  
25                 recite when we talk about our responsibilities.

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1                   Is there anything of significance in that  
2                   or is that just a variety in phraseology?

3                   MR. SCHWARTZ: I would put that in the  
4                   variety of phraseology.

5                   COMMISSIONER ROGERS: Because it's not  
6                   quite the same. It's a little different from -- I'll  
7                   just call your attention to it as to whether you think  
8                   that it suggests anything different.

9                   MR. PARLER: May I say something? It  
10                  suggests to me, and I hadn't focused on this before,  
11                  that we used the term, as we have historically used  
12                  for decades, "public health and safety," that that  
13                  perhaps excludes workers, which it does not. If we  
14                  want to include workers, we use this new term. So,  
15                  it's never too good an idea to invent new terms, at  
16                  least in areas like this if you can avoid it.

17                  COMMISSIONER ROGERS: Well, yes, I think  
18                  you said it very well. That's really what my concern  
19                  was. As soon as you start using slightly different  
20                  language, you do open the door to questions of exactly  
21                  what it means.

22                  On page 5, point number 1, really it seems  
23                  to me that there are a couple of ways that one could  
24                  interpret the last sentence in that, "and the  
25                  compatibility of their respective programs or

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1 regulations is an adjunct to the basic requirements  
2 and should be supportive of that requirement." There  
3 are a couple of ways I could interpret that. One is  
4 that it's -- there shouldn't be anything in the  
5 different programs or regulations that don't support  
6 everything in the basic requirement and another one is  
7 that you could add to them in any way you want. One  
8 is a kind of secondary view of this notion of what  
9 supportive means. It's taking adjunct and supportive  
10 together and exactly what they mean and whether one  
11 regards some basic requirements as being there and  
12 then compatibility issues relate to whether there's an  
13 add-on to those that somehow or other supports  
14 requirement, say goes beyond it or not.

15 So, it's not clear to me exactly what the  
16 meaning of that sentence is. I don't know whether  
17 that's -- whether a lack of clarity there is something  
18 that perhaps you've been conscious of or not, but I  
19 think you could interpret it in two distinctly  
20 different ways.

21 MR. SCHWARTZ: I understand.

22 COMMISSIONER ROGERS: Well, I think that  
23 the question of the early substantive involvement of  
24 agreement states, it occurred to me that perhaps the  
25 development of the Illinois and Pennsylvania programs

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1 may not have involved that early involvement in  
2 exactly the same ways. My understanding is that there  
3 was a difference, and this is the low-level waste area  
4 now. So, this meeting was not supposed to address  
5 that, but it did seem to me that maybe there was a  
6 difference in the early and substantive involvement of  
7 the agreement states, those particular agreement  
8 states with the NRC in the development of those two  
9 programs. My understanding is that one of them seemed  
10 to involve dialogue with us much more than the other  
11 one did. The other one seemed to come on full blown.

12 So, this is a two way street, is  
13 essentially what I'm saying, that it's not only that  
14 the NRC should attempt to bring the agreement states  
15 in early, but the agreement states should try to bring  
16 the NRC in early as well.

17 On page 9, there's a point that -- in item  
18 2 there's a parenthetical or a remark there in the  
19 middle, "More stringent regulatory requirements could  
20 preclude certain activities," and so on and so forth.  
21 There's again a possible interpretation of what you  
22 mean by "could" there. I assume that in this case  
23 this is a negative situation to be avoided rather than  
24 a permissive use of could. You don't want those  
25 things to happen, I take it.

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1 MR. SCHWARTZ: That's correct.

2 COMMISSIONER ROGERS: Again, one might --

3 MR. SCHWARTZ: We don't want them to be so  
4 stringent as to preclude that operation. That's  
5 certainly not what you want.

6 COMMISSIONER ROGERS: Yes. I think when  
7 you write things down like this it's good to be very  
8 clear on where you're really heading. I think it is  
9 clear, but if one wanted to one might interpret that  
10 as permissive and that's certainly not the intent.

11 MR. SCHWARTZ: That's not the intention at  
12 all.

13 COMMISSIONER ROGERS: On page 16, I think  
14 you touched on this a little bit in your remarks. But  
15 at the bottom in the adoption time frame, "The state  
16 radiation control staffs that are small and already  
17 strained, very little time is available from their  
18 regular studies for drafting regulations," and then  
19 there's a little elaboration on that.

20 While I think we should be sympathetic to  
21 the state radiation control staff problems, but if it  
22 is a question of a lack of resources and if their  
23 fees, if they charge fees, are considerably less than  
24 NRC's, then I'm not very sympathetic to having too few  
25 people and being able to meet these things on a more

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1       timely basis. I think, in other words, it's this  
2       issue that they may choose to set their fees in such  
3       a way to support a minimal program, but if that  
4       doesn't do the job as far as we're concerned, then  
5       there's no reason in my view that we should be  
6       particularly sympathetic to their problems if they  
7       aren't asking for enough funds to carry out their  
8       programs the way we feel they really ought to be  
9       carried out.

10               So, I think there is an issue there that  
11       should be kept in mind so that -- unless their fee  
12       structure is consistent with ours, I'm not inclined to  
13       be too sympathetic if they claim they don't have the  
14       resources to do the job.

15               MR. SCHWARTZ: Commissioner Rogers, may I  
16       respond to that? This is a documenting of some of the  
17       issues that we'd heard. I had not heard during the  
18       workshop or anywhere that three years was not enough  
19       time to do it, and this was the documentation of what  
20       people's problems are. But I don't think anybody got  
21       to the point of saying that we're going to relieve  
22       that.

23               COMMISSIONER ROGERS: Well, sometimes it's  
24       just that the system is so complicated that they have  
25       to go through. It's not a question of resources, it's

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1 just the thing is out of their control.

2 MR. SCHWARTZ: Recognize their advance if  
3 you need to do it.

4 COMMISSIONER ROGERS: But if it is a  
5 question of resources, then it seems to me that's a  
6 different issue.

7 MR. SCHWARTZ: Yes, sir.

8 COMMISSIONER ROGERS: I thought on page 22  
9 this communication between regulators is a very  
10 interesting one. You did again touch on it, but you  
11 noted that agreement states sometimes get valuable  
12 experience in regulating devices and materials that  
13 are outside of our authority. It seems to me it's  
14 really worth our effort to try to see that we can  
15 learn as much as possible from their experience in  
16 those areas because very often there's something that  
17 could call our attention to a way of doing something  
18 a little bit better in the areas that we control that  
19 has been learned from the machines and NARM and NORM  
20 activities that they carry out.

21 So, I just think that that whole notion of  
22 a better way of communicating experience back to us  
23 certainly could be helpful, something that we should  
24 try to foster.

25 Well, there was this question that I think

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1 we did discuss a little bit about. On page 25, the  
2 paper makes a point that agreement state licensees  
3 don't feel that they've been adequately informed about  
4 rulemaking proceedings. I guess you're well aware of  
5 that and things are published in the Federal Register.  
6 We know that's not always the best medium for  
7 conveying messages to certain communities that don't  
8 read the Federal Register regularly. But I do share  
9 the Chairman's point of view that we have to make sure  
10 that everybody knows at the same time that has an  
11 interest.

12 Yes, on page 32 I thought there was  
13 another point that perhaps you might say something to  
14 or perhaps Mr. Parler might say something to. At the  
15 bottom of the page, this is the criteria for temporary  
16 suspension area. The last sentence or so, "As stated  
17 within the procedure, the authority to temporarily  
18 suspend an agreement would be invoked only in a very  
19 unusual emergency situation resulting in exposures or  
20 releases greater than the stated magnitude." This  
21 seems to imply that it's only after something has  
22 taken place that we would start to move in as stated  
23 here, rather than in anticipation of something  
24 happening.

25 So, it's a question of the interpretation

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1 of 274j(2) as to whether there's an anticipatory  
2 involvement that NRC could contemplate, as well as one  
3 that takes place after the fact, after something has  
4 actually taken place.

5 MR. SCHWARTZ: I'd defer to General  
6 Counsel.

7 MR. PARLER: Under the existing law, if an  
8 emergency occurs, an agreement state -- there was a  
9 question as to whether or not prior to the provision  
10 for the emergency authority in 1980 the Agency had to  
11 wait until it had clear information or evidence to do  
12 the whole thing, to revoke or suspend. Under this new  
13 authority, it is clear that the NRC is able to focus  
14 on a precise situation and it is clear to me that that  
15 might be with regard to something that is about to  
16 happen if you know about it and you don't have to wait  
17 until it happens. I believe that the language on the  
18 page that you're talking about is probably more in  
19 line with the non-published or non-regulatory internal  
20 guidance that was put out --

21 COMMISSIONER ROGERS: Yes.

22 MR. PARLER: -- rather than with the words  
23 of the statute. It's for reasons such as that, plus  
24 a lot of other things, one of which has been mentioned  
25 earlier, the apparent disconnect between the every two

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1 year review and the criteria that we have for  
2 approving the agreements in the first place. I  
3 thought that the Commission's suggestion in its staff  
4 requirements memorandum that all of these kind of  
5 things be looked at and perhaps be pulled together in  
6 one regulation would do a lot of good.

7 COMMISSIONER ROGERS: Yes, Mr. Cameron?

8 MR. CAMERON: I think that the statement  
9 on page 32 is not as precise as it could be. The  
10 procedures for temporary suspension talk about which  
11 cause or threaten to cause. So, it does have the --

12 COMMISSIONER ROGERS: Well, the reason I  
13 brought it up, it was in the issues paper and I guess  
14 really my question is was it discussed at all in the  
15 workshop?

16 MR. SCHWARTZ: No. The only issues  
17 discussed in the workshop on revocation was what we  
18 discussed earlier, and that was the position of a few  
19 agreement states on the notion of continuing  
20 compatibility or only compatibility when you first  
21 sign up on the agreement. We didn't get into -- why  
22 we raised it, there was no discussion on this point.

23 COMMISSIONER ROGERS: All right. Well,  
24 thank you very much.

25 MR. SCHWARTZ: Thank you, sir.

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1 COMMISSIONER ROGERS: Fine job.

2 CHAIRMAN SELIN: Commissioner Remick?

3 COMMISSIONER REMICK: Just a couple  
4 points. Going back to the discussion on the states  
5 having an opportunity and at the same time providing  
6 opportunity for everybody, I think this is a good  
7 basis for better use of the advanced notice of  
8 proposed rulemaking and that gives everybody an  
9 opportunity. In other words, when we have something,  
10 rather than waiting for the point where it's proposed  
11 rule, the advanced notice will give everybody an  
12 opportunity, including the states. So, I think in  
13 this area where we're trying to improve communication  
14 with the states, the agreement states and everybody,  
15 we could consider more use of that technique.

16 One thing that came up for a lot of  
17 discussion, Shelly, I thought, was the question of the  
18 three years, whether three years was adequate, too  
19 long or too short. My impression of that discussion  
20 was that most people felt that it was a reasonable  
21 time and one of the convincing things was the strong  
22 indication by the agreement states if there was  
23 something that was truly important for the protection  
24 of public health and safety, they'd do it through  
25 conditioning licenses. They don't have to wait until

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1 they get their regulations changed.

2 That made a very strong point with me, the  
3 strength with which they indicated they'd just do that  
4 if it's really a question of protection of public  
5 health and safety.

6 One thing that was also apparent to me,  
7 and I realize there was a limited attendance there,  
8 but we probably have a situation here like we do with  
9 reactor licensees, that some states have resources and  
10 have strong programs and there are other states that  
11 don't have resources or have strong programs. One  
12 gets the impression that the states with the resources  
13 and strong programs would like to have more  
14 flexibility and less NRC presence, but some of the  
15 states that realize that they don't have the resources  
16 and strength of program generally appreciate the NRC  
17 doing things and providing guidance and direction.  
18 That certainly came across.

19 On the lighter side, there was some  
20 interesting things from my standpoint. I thought  
21 expressions like, "Well, why don't you just call us  
22 every five years and see how we're doing." Obviously,  
23 that comes from a stronger state, to another  
24 suggestion that the NRC should have a committee made  
25 up of consumer interest group to help the Commission

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1 decide whether a state is compatible or adequate, and  
2 then the state should have a committee made up of  
3 public interest groups to help it decide whether it  
4 should contest the NRC findings. So, we had those  
5 extremes, but all in all I thought it was extremely  
6 valuable for me to have participated the one afternoon  
7 in the workshop and hear the various discussions.

8 One thing came across just as it did in  
9 the enhanced participatory rulemaking. I think there  
10 was a general appreciation for the fact that the  
11 workshop was held and people would sit around the  
12 table and discuss these topics. All in all, I think  
13 it was a very beneficial effort on behalf of the  
14 Commission to have done it. I look forward to the  
15 further work of this group in coming up with options  
16 and suggestions.

17 CHAIRMAN SELIN: Thank you, Commissioner  
18 Remick.

19 Commissioner de Planque?

20 COMMISSIONER de PLANQUE: Yes, just two  
21 items.

22 I'd like to return to the resource  
23 question too as mentioned by Commissioners Rogers and  
24 Remick. Just a point of clarification for my benefit.  
25 When you talk about raising the fees in order to

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1 improve the resources in the states, it's my  
2 understanding that at least in some of the states that  
3 there's not necessarily a direct connection between  
4 the income from fees and, for example, the number of  
5 personnel that may be in the agreement states office,  
6 as there often is not a direct connection in the  
7 federal government either.

8 Is this true, that more dollars doesn't  
9 necessarily mean more people for the program, for at  
10 least some of the states?

11 MR. SCHWARTZ: Again, I don't want to make  
12 generalities, but in specifics I understand that like  
13 in the State of California, just recently the funds  
14 collected now through fees will go directly to the  
15 program and that's new. In other states, I know where  
16 the states collect fees and there is an excess and  
17 that excess is used for other parts of the program,  
18 other parts of state programs, not necessarily the  
19 agreement state program. But when you go to a state  
20 like Rhode Island with 63 licenses and California with  
21 ten percent of the licenses of the country, 2200,  
22 there's a wide variation between and among how the  
23 states gather the fees and how they spend the money  
24 from the fees.

25 COMMISSIONER de PLANQUE: So, it's

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1       probably true that we should use with caution the  
2       concept that if you increase your fees then you can  
3       have a better -- more people and a better program.  
4       That doesn't necessarily follow because of the way the  
5       different states manage their income and FTEs?

6               MR. SCHWARTZ: I take that as a yes, but.

7               COMMISSIONER de PLANQUE: Okay.

8               MR. SCHWARTZ: Yes, I think it's good to  
9       encourage the states to raise the fees to pay for the  
10      program, but also recognize that it's not directly to  
11      the program everywhere else.

12              COMMISSIONER de PLANQUE: Okay.

13              MR. SCHWARTZ: I think they both have to  
14      be connected.

15              COMMISSIONER de PLANQUE: Okay. A  
16      question related to the schedule on your last slide.  
17      Your schedule for the remainder of '93 looks very  
18      ambitious. In between steps 1 and 2, are you  
19      providing for time for the Commission to respond?

20              MR. SCHWARTZ: In between 1 and 2 --

21              COMMISSIONER de PLANQUE: September and  
22      October.

23              MR. SCHWARTZ: -- I was looking for a nod  
24      from the Commission to go ahead and allow us to  
25      discuss it with the agreement states. But once we

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1 came back from the agreement state meeting, that is  
2 where I would say is the -- where I say early '94,  
3 where I'd expect the Commission to really say yes or  
4 no, go forward or redo or redraft. That's where I'm  
5 looking for the full Commission input.

6 COMMISSIONER de PLANQUE: Okay. So, in  
7 between September and October, you're still looking at  
8 it in terms of options rather than --

9 MR. SCHWARTZ: That's correct.

10 COMMISSIONER de PLANQUE: -- chosen  
11 options?

12 MR. SCHWARTZ: That's correct.

13 COMMISSIONER de PLANQUE: Okay. Thank  
14 you.

15 CHAIRMAN SELIN: Thank you.

16 In the light of what would be a  
17 paraphrase, a nod but, I'd like to make a couple of  
18 comments.

19 First of all, this is really a very  
20 interesting, informative and helpful document and  
21 report. I'd just like to put some -- I don't want to  
22 say boundaries, but some considerations I will have  
23 when I see your paper and I just want to make sure  
24 that you answer these questions because, as  
25 Commissioner de Planque says, the schedule is pretty

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1 rough. So, to sandbag you and not indicate this I  
2 don't think would be helpful.

3 Point one, our Atomic Energy Act  
4 distinguishes between adequacy and compatibility and  
5 we should also. I don't think you should allow the  
6 two to be merged in any of these options. There are  
7 different ways of reading them. I read adequacy as  
8 what you have to be able to assure that a state, just  
9 taking one at a time, has a program. A compatibility  
10 is that which goes beyond that where you're looking  
11 for some benefits of standardization nationwide, even  
12 though they might not be required on a particular  
13 state. And the two examples, one I brought up and one  
14 you brought up, are good examples. The interstate  
15 commerce, the idea that there are a number of  
16 different ways to specify some of these things, but it  
17 would be much better for the country as a whole to  
18 settle on one and stick to them, and then the  
19 reporting requirements that they have.

20 To comment on this, if we felt -- I don't  
21 happen to believe what I'm about to say, but if we  
22 felt it was absolutely essential to have one and a  
23 half FTE per 100 licensees, that would be an adequacy  
24 issue, it would not be a compatibility issue because  
25 we would feel that we would have to be prescriptive in

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1 certain aspects of the program to guarantee a good  
2 piece.

3 The second point is the timeliness point.  
4 I think it's very important that you look at ways of  
5 handling the unusual changes in regulations where  
6 three years is too long. It's not a question just is  
7 three years too long or not, it depends on what we're  
8 talking about. This idea of incorporating them in  
9 licenses or what have you, fine. But whatever  
10 compatibility policy we have, I think it must maintain  
11 the option, should it be necessary, of requiring the  
12 more rapid change than three years if the health and  
13 safety is truly at point.

14 To follow up on Commissioner Remick's  
15 point, in assessing both compatibility and timeliness,  
16 we shouldn't just look at the state's regulations, we  
17 should look at the state's program, how things are  
18 carried out.

19 The third point is to follow up on  
20 Commissioner de Planque's point. Things depend on the  
21 results. Whatever policy we have, I would hope it  
22 would allow us to have pretty simple tests for  
23 programs that are very strong, but allow us to become  
24 more prescriptive where there's reason to believe that  
25 the programs are not strong. So, resource questions

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1 might be a good example. If a program is meeting all  
2 performance measures, I don't think it's any of our  
3 business what the resources are. There are a lot of  
4 different ways of measuring resources, et cetera. If  
5 we don't even see a downward trend, that we  
6 inspections being carried out and all that, we don't  
7 care how many FTE they have, whereas in places where  
8 they're not meeting their standards, then I think it  
9 behooves us to look more closely at, say, resources or  
10 maybe some of the more prescriptive points, the  
11 quality of some educational program, et cetera.

12 So, whatever we end up with I think has to  
13 be consistent with the general admission tendency to  
14 move more towards performance and concentrating on  
15 where there's a problem and less towards prescription  
16 and saying automatically what's sauce for the goose is  
17 sauce for the gander.

18 Then the last point. This may be hard and  
19 maybe it's not worthwhile, but you brought it up, Mr.  
20 Schwartz, that the importance of looking at more of a  
21 documentary basis for what we require, whether it's a  
22 rule that says, here's how we're going to define  
23 adequacy and compatibility or a more standard policy  
24 statement or a set of inspection reports so that we  
25 can point to something to tell the states, "Here's

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1 what we expect of you and here's what we don't." As  
2 you look at these different options, if they require  
3 more or less documentation or rewriting or what have  
4 you, differentially that might be useful.

5 Finally, I'll just repeat the point I made  
6 earlier. I think we should require no more than we  
7 need, but really require what we need. There's just  
8 too much stuff in the list now that if you look at our  
9 behavior you have to believe we don't mean what we say  
10 because we allow states to go for years without  
11 certain regulations. We say we require the  
12 regulations, but then, in fact, we don't. Without  
13 saying what the policy ought to be, I'm just looking  
14 at the experimental evidence. That suggests that we  
15 don't mean everything we say. We should be thoughtful  
16 about what we require, but then require it.

17 But I made a little fun of Commissioner  
18 Rogers' predilection for fuzzy logic, but in fact  
19 there should be some fuzzy logic. There are things  
20 that we should require when we believe on a  
21 conditional basis that the state program is going  
22 fine, that's fine. But if not, then we should  
23 consider requiring certain things that we don't  
24 require of the strong program.

25 Thank you.

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1 Any wrap-up?

2 COMMISSIONER ROGERS: Yes. I'm all for  
3 fuzzy logic, but not logical fuzziness.

4 CHAIRMAN SELIN: Commissioner Remick?

5 COMMISSIONER REMICK: Just one follow-up.

6 I agree with Chairman Selin on that it's  
7 very hard for me to understand how we could combine  
8 findings of compatibility and adequacy. At the same,  
9 since you are developing options, I would not want to  
10 preclude them, at least using your creativity or  
11 innovation, if you think there are other options. As  
12 I say, it's very difficult for me to see how we could  
13 combine them, but I wouldn't want to preclude your  
14 coming up with whatever options you feel we should  
15 consider.

16 CHAIRMAN SELIN: But don't forget we have  
17 a statute and we either have to live within the  
18 statute or recommend a change in the statute.

19 MR. PARLER: Mr. Chairman, may I expand on  
20 one of my earlier answers, which perhaps to the  
21 authors of the internal procedure might leave them  
22 with an uncomfortable feeling? I'm referring to  
23 Commissioner Rogers' question about the language on  
24 the bottom of page 32 about the circumstances under  
25 which the temporary suspension authority may be

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1 exercised. The language on page 32 suggests that all  
2 that can be done after there is something resulting in  
3 exposure or release, my earlier answer said that that  
4 was clearly inconsistent with the statutory authority.

5 Since my answer, I've read the internal  
6 procedures and it is clearly inconsistent with the  
7 internal procedures as Mr. Cameron suggested. But I  
8 thought I would like to clarify the record in that  
9 regard.

10 CHAIRMAN SELIN: Thanks very much.

11 MR. SCHWARTZ: Thank you.

12 (Whereupon, at 11:21 p.m., the above-  
13 entitled matter was concluded.)  
14  
15  
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TITLE OF MEETING: BRIEFING ON RESULTS OF AGREEMENT STATE  
COMPATIBILITY WORKSHOP

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: AUGUST 30, 1993

were transcribed by me. I further certify that said transcription  
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**BRIEFING ON  
WORKING GROUP PROGRESS ON  
DEVELOPMENT OF A COMPATIBILITY POLICY**

**AUGUST 30, 1993**

## **OUTLINE**

- **COMMISSION DIRECTIVE**
- **CREATION OF WORKING GROUP: CHARGE & MEMBERSHIP**
- **COMPATIBILITY ISSUES PAPER**
- **DISCUSSION AT MAY 20, 1993 PUBLIC MEETING**
- **COMPATIBILITY WORKSHOP ON JULY 26-27, 1993**
- **POLICY DEVELOPMENT SCHEDULE**



- **COMMISSION DIRECTIVE:**

- **JANUARY 22, 1993, SRM**

**"THE COMMISSION HAS APPROVED THE STAFF'S RECOMMENDED PROCESS FOR DEVELOPMENT OF GENERIC GUIDANCE IN SECY-92-243, EXCEPT THAT THE FOCUS OF THAT EFFORT SHOULD INCLUDE ALL PROGRAM AREAS ADDRESSED IN THAT SECY PAPER OTHER THAN LOW-LEVEL RADIOACTIVE WASTE DISPOSAL."**

- **SECY-92-243**

**"ENHANCE THE PRESENT PROCESS OF OBTAINING AGREEMENT STATE PARTICIPATION BY WORKING WITH ALL THE AGREEMENT STATES IN THE EARLIEST POSSIBLE STAGES OF DEVELOPMENT OF A COMPATIBILITY POLICY."**

- **CREATION OF WORKING GROUP: CHARGE & MEMBERSHIP**
  - **DEVELOP A PAPER DISCUSSING VARIOUS ISSUES ASSOCIATED WITH THE SCOPE OF A POLICY ON COMPATIBILITY**
  - **PARTICIPATE IN DISCUSSIONS ON THE ISSUES WITH THE**
    - AGREEMENT STATES**
    - COMMISSION AND ITS STAFF**
    - NON-AGREEMENT STATES**
    - REGULATED COMMUNITY**
    - GENERAL PUBLIC**
  - **DEVELOP A COMPATIBILITY POLICY FOR AGREEMENT STATES AND EDO REVIEW TO SUBMIT FOR THE COMMISSION'S CONSIDERATION**
  - **PROVIDE GUIDANCE ON COMPATIBILITY POLICY CRITERIA DEVELOPMENT AND IMPLEMENTATION STRATEGY**

- **WORKING GROUP MEMBERSHIP**

**SHELDON A. SCHWARTZ, OSP, GROUP LEADER**

**FREDERICK COMBS, NMSS**

**NICK COSTANZI, RES**

**FRANCIS X. CAMERON, OGC**

- **REPRESENTATIVES FROM THE ORGANIZATION OF AGREEMENT STATES (OAS)**

**WAYNE KERR, CURRENT CHAIR PERSON OF OAS**

**THOMAS HILL, FORMER CHAIR OF OAS**

**ROBERT KULIKOWSKI, CHAIR-ELECT OF OAS**

- **ADDITIONAL SUPPORT**

**TERRY FRAZEE, WASHINGTON STATE**

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**KATHRYN WINSBERG, OGC**

**MARIA LOPEZ-OTIN, OSP**

- **COMPATIBILITY ISSUES PAPER**

- **PREAMBLE**
- **BASICS**
- **FLEXIBILITY**
- **COMMUNICATIONS**
- **IMPLEMENTATION**
- **REVOCATION**

- **DISCUSSIONS AT MAY 20, 1993, PUBLIC MEETING**
  - **AGREEMENT THAT RADIATION PROTECTION UNIFORM STANDARDS ARE NECESSARY BUT NO CLEAR DEFINITION OFFERED.**
  - **IN DEVELOPING REGULATIONS NRC SHOULD GIVE CONSIDERATION TO THE FACT THAT AGREEMENT STATES HAVE TO ADDRESS MORE THAN JUST THE ATOMIC ENERGY ACT (AEA) MATERIAL.**
  - **NRC TENDENCY TO PREFER A RIGID STANDARD FOR COMPATIBILITY WOULD APPEAR TO RUN COUNTER TO A PHILOSOPHY OF ENHANCED RECOGNITION OF STATES' INNOVATION.**
  - **NEED TO PROMOTE DEVELOPMENT OF COMPETENCY OF NRC AND AGREEMENT STATE PERSONNEL.**

- **DISCUSSIONS AT MAY 20, 1993, PUBLIC MEETING (CONTINUED)**
  - **NATIONAL STANDARDS SHOULD EITHER BE UNIFORM FROM AGENCY TO AGENCY OR SHOULD BE CLEARLY IDENTIFIED AS NRC STANDARDS.**
  - **CERTIFICATION OF INSPECTORS.**
  - **STATES SHOULD BE INVOLVED IN THE EARLY STAGES OF FORMULATION OF RULES, POLICIES AND PROCEDURES.**
  - **FAIR NOTICE SHOULD BE PROVIDED, DURING THE RULEMAKING PROCESS, TO AGREEMENT STATE LICENSEES OF RULES WHICH ARE A MATTER OF COMPATIBILITY FOR THE AGREEMENT STATES.**

- **COMPATIBILITY WORKSHOP ON JULY 26-27, 1993**

- **ACCOMPLISHMENTS**

- IMPROVED COMMUNICATION AMONG THE REGULATORS (STATE AND FEDERAL), THE REGULATED COMMUNITY AND THE PUBLIC.**

- BETTER UNDERSTANDING AMONG THE REGULATORS, THE REGULATED COMMUNITY AND THE PUBLIC ABOUT THE ISSUES RELATED TO COMPATIBILITY AND UNIFORM REGULATIONS.**

- **COMPATIBILITY WORKSHOP ON JULY 26-27, 1993 (CONTINUED)**

- **ISSUES**

- STRONG NRC AND STATE COMMITMENT IN STATE/FEDERAL PARTNERSHIP.**

- RADIATION PROTECTION STANDARDS SHOULD BE UNIFORM, HOWEVER, NO CLEAR DEFINITION.**

- **STATES WANT FLEXIBILITY**

- **INDUSTRY WANTS UNIFORMITY**

- PUBLIC INTEREST GROUPS WANT ABILITY FOR LOCAL GOVERNMENT TO GO BEYOND FEDERAL OR STATE REQUIREMENTS.**



- **COMPATIBILITY WORKSHOP ON JULY 26-27, 1993 (CONTINUED)**

**PERHAPS TERM SHOULD BE "COORDINATED PROGRAM."**

**PROPOSED RULEMAKINGS SHOULD INCLUDE AGREEMENT STATE LICENSEE COMMENTS.**

**NEED FOR CORE SET OF REGULATIONS.**

**PERHAPS AN ENHANCED CRCPD PROCESS FOR SUGGESTED STATE REGULATIONS COULD SERVE ALL REGULATORY NEEDS.**

**MAKE ADEQUACY AND COMPATIBILITY DETERMINATIONS SIMPLER --NOT AS CONVOLUTED.**

**PROTECTION OF PUBLIC HEALTH AND SAFETY IS PRIMARY MISSION.**

## **WHERE WE ARE HEADING**

- **NEAR TERM**

**COMMISSION POLICY OPTIONS**

- **ENHANCED STATUS QUO (FOUR COMPATIBILITY DIVISIONS)**
- **DEVELOP A "COORDINATED PROGRAM"**
- **COMBINED ADEQUACY/COMPATIBILITY DETERMINATIONS WITH CORE (UNIFORM) RADIATION PROTECTION STANDARDS**

**IMPROVE OPPORTUNITIES FOR AGREEMENT STATES  
EARLY AND SUBSTANTIVE RULEMAKING INVOLVEMENT**

- **LONGER TERM**

**VIABILITY OF NATIONAL RADIOLOGICAL REGULATORY STANDARDS  
DEVELOPED BY CRCPD WITH FULL FEDERAL/STATE AND PUBLIC  
PARTICIPATION**

- **POLICY DEVELOPMENT SCHEDULE**

<b>SEPTEMBER 1993</b>	<b>COMPLETE DRAFT POLICY OPTIONS ON COMPATIBILITY AND PROVIDE TO COMMISSION</b>
<b>OCTOBER 1993</b>	<b>DISCUSS POLICY OPTIONS WITH AGREEMENT STATES AT THE ANNUAL MEETING</b>
<b>NOVEMBER 1993</b>	<b>PROVIDE PROPOSED POLICY OPTIONS TO COMMISSION WITH STAFF RECOMMENDATION FOR PUBLICATION IN THE FEDERAL REGISTER FOR 60 DAY PUBLIC COMMENTS</b>
<b>EARLY 1994</b>	<b>ANALYZE COMMENTS AND PROVIDE FINAL POLICY TO COMMISSION FOR APPROVAL</b>
<b>APRIL 1994</b>	<b>PUBLISH FINAL NRC POLICY IN FEDERAL REGISTER. PRESENT AT THE ANNUAL CRCPD MEETING IN WILLIAMSBURG, VA</b>

***ISSUES FOR A PROPOSED  
POLICY ON  
COMPATIBILITY FOR DISCUSSION  
AT THE WORKSHOP  
ON JULY 26-27, 1993***

June 29, 1993

**ISSUES FOR THE  
PROPOSED POLICY ON  
COMPATIBILITY OF AGREEMENT STATES  
June 29, 1993**

**SUMMARY**

The program established by Congress by Section 274 of the Atomic Energy Act of 1954, as amended, is unique in its provisions. At the heart of the program is a discontinuance of regulatory authority by the NRC (formerly AEC) for certain specified activities and the assumption of that authority by a State through a formal agreement with the NRC. The purposes of the section are contained in Section 274a. and provide some general guidance on the type of relationship between the States and NRC. The phrases "recognize the interests of the States," "establish programs for cooperation," "promote an orderly regulatory pattern," and "provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States" constitute the fundamentals of this program. Some of these fundamentals are reiterated in the agreements entered into with individual States.

The relationship of the NRC with the Agreement States has evolved since 1962 (the year of the first Agreement State) from an informal relationship with little or no explicit oversight role by NRC to a fairly formalized relationship. The formalized relationship currently exhibits itself primarily through the periodic review of each Agreement State and, to some extent, through "incident or event" reporting, through NRC's data collection efforts and joint NRC/Agreement meetings and workshops. There is an additional informal relationship existing between NRC and each Agreement State (and sometimes with Agreement States collectively) that is carried out on a daily basis. These informal relations are carried out routinely and

encompass such things as information exchange, technical and regulatory advice, and numerous matters which are necessary for each party to carry out their respective regulatory programs in an efficient and effective manner.

However, there has been concern expressed regarding the NRC's oversight role, its emphasis on uniformity in regulations, and the amount of flexibility requested by the Agreement States in order to consistently regulate all sources of radiation in accordance with local conditions. This paper initiates a discussion of the NRC/Agreement State relationship which will culminate in a draft Commission Policy on compatibility to be presented for Commission approval in November 1993.

#### BACKGROUND

Neither the Atomic Energy Act nor the legislative history of Section 274 provides a definition of "compatibility." However, the legislative history makes it clear that uniformity (or rather, lack of conflict) between the Federal program regulating nuclear materials and the proposed State programs was a prime consideration. This led to the adoption of the language requiring that proposed State programs be "compatible" with the Commission's program.

The "compatibility" of Agreement State regulatory programs with the NRC has been the center of many policy discussions. Concerns on compatibility have been raised repeatedly by Agreement State personnel.

In an attempt to respond to the concerns of the Agreement States, the regulated community and the general public, the Commission has directed the staff to develop a Commission Policy on compatibility. A working group has been established to perform

this task with input from the Organization of Agreement States. The working group's draft issues paper was discussed with the Agreement States on May 20, 1993 during a public meeting following the annual meeting of the Conference of Radiation Control Program Directors, Inc.

In addition to the working group, representatives of the regulated community, the non-Agreement states, and the general public will participate in a July 1993 public workshop on the compatibility policy issues. The draft Commission Policy on compatibility will be discussed with the Agreement States during their October 1993 annual meeting. The working group plans to present the draft policy to the Commission in November 1993 for publication in the Federal Register for public comment.

In framing the issues pertinent to a Commission Policy on compatibility both NRC and the Agreement States have presented views which diverge as well as those which are consistent with one another. The common focal point of both the NRC and the Agreement States is adequate protection of the public health and worker safety within the limits of their respective statutory authority. The main disparity lies in the degree to which NRC and the Agreement State radiation control programs must be essentially identical. While no one seriously supports the extreme positions of "carbon copy" and "no equivalence required," there is still sentiment to support a wide range of possibilities.

The tendency to prefer a rigid standard for compatibility would appear to run counter to a philosophy of enhanced recognition of States' rights, the reason for the Agreement State program in the first place. States have traditionally been responsible for assuring the health and safety of their citizens. In viewing

these two positions a number of statements can be made. The principal views of the working group concerning federal oversight, state discretion, and the relationship of the NRC and the Agreement States are as follows:

1. The overriding requirement for both NRC and the Agreement States is to provide for adequate protection of the public health and safety from potential hazards arising from the use of regulated materials. The compatibility of their respective programs or regulations is an adjunct to the basic requirement and should be supportive of that requirement.
2. The individual Agreement States and their employees and NRC and its employees share a common function and should be considered partners in carrying out their respective regulatory functions. Both NRC and the States have either a mandate or an inviolable sovereignty that, in their dealings with one another, sets them apart from the general public or members of the regulated community.
3. Due to the extensive interaction of the NRC and the Agreement States and the interrelationship of many aspects of their respective regulatory programs, there is a need for early and substantive involvement of Agreement States in the development of policies and regulations necessary for the conduct of effective regulatory programs. A program of cooperation and consultation is essential to the implementation of this principle.
4. It is recognized that each regulatory agency may be faced with physical and/or environmental conditions, operational needs of the regulated community, and policy directives of



their legislative or administrative bodies which affect their respective regulatory programs. Such conditions require a recognition of the need for flexibility in implementing their regulatory programs which could, for instance, result in regulations differing from NRC and other Agreement States. Such flexibility should not jeopardize the regulatory agency's ability to adequately protect the public health and safety.

5. It is recognized that States' innovation has created new regulatory approaches. Innovative approaches should be encouraged, and impediments to such innovation should be discouraged.
6. It is recognized that there is no single way of conducting effective regulatory programs. Regulatory programs of Agreement States must be responsive to each State's citizens, legislature, and administrative officials. NRC and each Agreement State must operate within their respective governmental systems. Effective regulation of the uses of radioactive material is the key provision whether accomplished through formal adoption of regulations or through license condition or by administrative order, etc. It is further recognized that while each regulatory agency may have direct or indirect interest in the other's program or in individual events such as incidents, the agency with regulatory jurisdiction must be allowed to manage those matters without undue involvement of other regulatory agencies.
7. Consistent with the partnership principle stated in number 2 above, it is recognized that NRC and the Agreement States can complement each other in addressing certain issues or

responding to incidents or events. Each has experience and expertise, although the expertise and depth of resources may vary considerably among the regulatory agencies. States may be called on to supplement the NRC in some cases, and NRC may supplement the Agreement States in others. The individual and collective resources and expertise of all the regulatory agencies should be recognized and utilized to their mutual benefit.

8. The key to implementation of an effective policy is how it is administered. Arbitrariness should be avoided, fairness applied, and soundly based judgement used in arriving at decisions.
9. It is recognized that the NRC has considerable resources to contribute to research and development on requirements necessary to protect the public health and safety from radiation hazards.
10. NRC has the unique responsibility to assess State programs to gauge nationwide adequacy to protect the public health and safety from radiation hazards associated with Atomic Energy Act material.
11. NRC is in a position to gather information on the uses of Atomic Energy Act radioactive materials to provide trend and pattern analysis on a national basis and to gauge the effectiveness of the nation's radiation regulatory program pertaining to Atomic Energy Act material.
12. A regulatory program is not a statistical program of numbers of inspections, numbers of amendments, etc. Its value is to the user-beneficiary: How well is the regulatory program

working (on either local or national scale) to assure that the benefits are available with minimal risk to workers, the public, and the environment.

- 13 Criteria for determination of compatibility should consider balancing flexibility in light of the adequacy of the program and other factors, such as the federal leadership, local conditions, State's rights and the protection of public health and safety.

#### POLICY ISSUES

In Section 274 of the Act the terms "cooperation," "orderly regulatory pattern," "coordination," and "adequate" appear in the text before the first use of the term "compatible". "Compatible" is not defined and where used it is in association with the term "program." To achieve an "orderly regulatory pattern" that is coordinated and compatible, regulatory programs presumably must: 1) Protect the citizens within their jurisdiction, 2) Not result in any adverse effect on citizens in other jurisdictions and 3) minimizes conflicts between the Federal and State regulatory programs and between States.

#### 1. Adequate protection of citizens:

Protection of citizens must be paramount; presumably, again, through whatever means are available to the regulatory agency. The radiation control program should assure consistent understanding between and among licensees, workers, the public and the regulatory program. To be an adequate program it must meet certain minimum national standards to protect the public health and safety while allowing for a certain degree of flexibility in accommodating local needs. Radiation protection standards and essential regulations must be consistent

nationwide. Changes of safety significance should be implemented when known to the regulatory agency through any effective mechanism available to it; other key requirements and procedures should be adopted in a timely fashion.

2. Assurance that one jurisdiction's actions do not impact the citizens of another jurisdiction:

Requirements affecting interstate commerce (such as relating to packaging, shipping, manufacturing of consumer products, or work to be performed by out of state companies) should adhere to the same basic rules as required nationally and internationally. Any differences should not interfere with the conduct of trade.

(More stringent regulatory requirements could preclude certain activities and possibly shift the impact to other jurisdictions while still enjoying the benefits, e.g., forbidding low level waste disposal in the state yet allowing industry that produces LLW.) Nationally, there should be confidence in each others licensing actions so that sources and devices approved in one State or by NRC can be readily accepted and licensees from one State or locale can be recognized as acceptable in another State or locale without undue delay in re-examining their manufacture, labeling or individual qualifications. It is beneficial for jurisdictions to have the same exempt quantities and exempt concentrations to prevent releases occurring in one jurisdiction from impacting another. However, considerations for flexibility in regulatory approaches should be weighed. There should be sufficient communication from one State to another and from each State to the NRC on such matters to allow a reasonable interchange of information and to improve radiation safety nationally.

Finally, there should be oversight of the 'national' program (NRC and Agreement States) to assure consistency and adequacy

throughout the nation without compromising the need for flexibility in implementation. This oversight must include the ability of the NRC to revoke or withdraw Agreement State status for cause.

#### ISSUE 1 - BASICS

What is/are the core elements of a compatible program?

As discussed in SECY-91-039, the Commission has discretion to define compatibility and its scope. This means that the NRC can review its regulations and practices and categorize them using the State Programs 1984 Internal Procedures categories (or some other categories). However, NRC has never articulated those factors that should be considered in any new categorization. While assuring that a State regulatory program provides for adequate safety is important, adequate safety will seldom, if ever, require verbatim adoption of an NRC regulation or practice. Thus, if adequate protection is the only consideration, there would be no need for any Division 1 rules, because Division 2 rules, requiring adoption of the same underlying safety principle by the States but permitting more stringent regulations, would be sufficient. Therefore, in identifying factors which lead to categorization of Division 1 rules (rules States must adopt essentially verbatim), matters other than direct safety significance play the predominant role. In this regard, the following Policy Factors (from SECY-91-039) can be considered in deciding the degree of uniformity that is necessary or desired. These Policy Factors were written to bound the range of options; analyzing them out of context should be avoided, since an unintended bias may be construed. The purpose of referring to these policy factors is to capture these concepts to assure a well-rounded public discussion prior to drafting a proposed policy on compatibility.

1. Need to preserve a Federal leadership role because of greater expertise in some areas and need to have a uniform national approach to radiation safety matters.
2. Need for effective communications between regulatory agencies, e.g., uniformity of terminology and technical definitions.
3. Need to avoid burdens on interstate commerce, e.g., uniformity of safety design and labeling of consumer products.
4. Need to assure the effective implementation of specific Federal initiatives, e.g., recordkeeping in support of a Federal study that is only useful if uniform records are kept.
5. Need to consider NRC resources available to evaluate Agreement State programs and train State staff. Uniformity allows for the use of standard reviews and requires less NRC resources.
6. Need to provide for equal treatment of licensees from State to State to avoid licensees shopping around for a lenient regulatory program.
7. Need to promote development of competency of Agreement State personnel.
8. Need to encourage State innovation and promote the transfer of State as well as Federal initiatives.
9. Need to consider local conditions and needs.

10. Need to recognize the States' need to provide an equal level of protection for all regulated sources of radiation, e.g., NORM, NARM, x-ray machines, accelerators.
11. Need to have uniform concepts of acceptable practice to deal with public concern as to what is acceptable.
12. Need to preclude variations in State practices that could lead to local safety benefits at the expense of risks elsewhere.

In the Staff Summary to SECY-92-243 it was observed that "numerous commenters indicate that 'technical aspects' of programs, such as definitions, terminology, signs, symbols, radiation dose limits, reporting requirements, and radiation source and device design standards, should be identical. For example, terminology must be identifiable and symbols need to be universally recognized. Standards, such as annual exposure limits, are well understood, because they are based on a wealth of scientific evidence and have been approved by international agencies that set standards, such as the International Commission on Radiation Protection. Other standards include radiation protection practices and procedures, personnel qualifications, and personnel dosimetry. In addition, commenters point out that non-uniformity of standards would confuse the public regarding what is adequate, eroding public confidence and adversely affecting interstate commerce. Uniformity facilitates training and makes such training more cost effective. States should not be allowed to vary radiation standards in one area, perhaps leading to increased exposure in another (e.g., decreasing the allowed dose to the general public, may result in an increase in occupational exposures)." On the other hand, there is a great desire for State flexibility to accommodate local needs. It is

also noted that U.S. DOE standards vary somewhat from NRC/Agreement State regulations and worker re-training is required when workers move from a DOE work environment to the NRC/Agreement State realm and vice versa. The question, therefore, is what provisions (the core elements) must be essentially the same for the NRC and from state to state?

#### A. Uniform National Standards

It is generally agreed that some national standards are needed to protect the health and safety of the people against radiation hazards. This is specifically true for regulation of Atomic Energy Act material and generally true for NARM and machine-produced radiation. These "minimum" standards should include uniformity in maximum permissible doses, levels of radiation, and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on recognized national and international guidance and consensus standards followed by industry and government. In addition, it is important to strive for uniformity in technical definitions and terminology, particularly as they relate to such things as units of measurement and radiation dose. It should be understood that certain regulations best serve our collective goals by being identical in language, although modification may be necessary to encompass radiation sources not regulated by NRC. However, the question remains as to how much flexibility the States should have to impose additional requirements to protect public health and safety for "agreement materials" and to provide for more stringent standards where special conditions are in effect. Should a specific list of required standards be part of the Policy statement or can this list be prepared and updated through ongoing NRC/Agreement State interaction? Are only certain provisions of 10 CFR Part 20 to be considered as the basic standard, with the other sections of



Part 20 being derived from the basic standard, or is the entire Part 20 to be considered as the "standard"?

#### B. Radiation Protection Standards/Regulations

In addition to the national standards which address maximum permissible doses, levels of radiation and concentrations of radioactivity, other State and NRC radiation protection regulations, practices, and implementation procedures should be in agreement with standards/regulations, health and safety principles and other guidance published by national and international bodies. The work of organizations such as the NCRP, ICRP, and CRCPD should be consulted wherever possible in order to take advantage of research and deliberations that have taken place. Can these secondary standards, principles, and guides be expressed as "goals" or "guidelines" rather than specific regulations?

#### C. Interstate Commerce and Reciprocity

One area where a high degree of uniformity should be considered is in the regulations that affect people and products moving across jurisdictional boundaries (this particularly relates to sources manufactured for distribution throughout the U.S. and mobile licensees such as industrial radiographers). There is concern that actions taken in one state or region should not impede trade or create barriers to the procurement of goods and services. However, local needs may still carry great weight and the question may be when is there undue interference with interstate or international commerce? What provisions are required, and conversely what provisions cannot be changed, to avoid burdens on interstate commerce e.g., uniformity of safety design, labels, signs, and symbols affixed to radioactive

products which are transferred from person to person, and basic terminology.

Some additional requirements may not prove to be an impediment to commerce, e.g., the requiring of two person radiography crews, provided they do not restrict an otherwise acceptable practice entirely out of existence. In fact, differences between the states may be good in that they make licensees think about the radiation safety significance of the difference rather than always doing things by routine.

It is generally held that certain provisions must be adopted, essentially verbatim, because they form the basic language of radiation protection essential for effective communication between regulatory agencies and the regulated community. These provisions have been formulated and agreed to by national and international organizations, from consensus standards followed by industry and government. They include technical definitions such as "curie," "dose," and "rad," radiation protection standards such as occupational exposure limits, effluent release limits, and legal definitions such as for "byproduct material," "restricted area" and "occupational dose." These provisions are so basic to the regulatory programs that their modification by a State may result in numerous and difficult problems including interference in interstate commerce.

The question is which provisions must be essentially identical from one radiation control program to the next?

#### D. Improved Public Health and Safety

There maybe instances when a new regulation is so important for the protection of public health and safety that it should be

adopted immediately nationwide. Early and substantial involvement of the States in the NRC regulatory process is imperative when health and safety are at stake. In addition, NRC could solicit State suggestions for alternative approaches and then conduct research to determine whether a suggested alternative approach is effective as a substitute for the regulation or as temporary measure until regulations can be modified by the State. The States could also build into their regulatory mechanism a procedure that will allow them to adopt a new regulation, essentially verbatim, whenever such a regulation will lead to a significant improvement in the protection of public health and safety. Although most states do have a procedure for the emergency adoption of regulations, there is usually a sunset provision that takes effect within a short period of time after the emergency promulgation unless the administrative procedures act has been followed for the normal promulgation of regulations. It would improve the protection of public health and safety if the States were able to have a mechanism for the automatic adoption of a regulation that makes demonstrable improvement in the protection of public health and safety.

#### E. Adoption Time Frame

The states, with few exceptions, indicated that three years should be enough time to adopt compatibility requirements. However, some instances were identified where more time may be necessary. Some States indicated that difficulties tend to be tied to inadequate funding and staffing. For State Radiation Control staffs that are small and already strained, very little time is available from their regular duties for drafting regulations. Also, for those rare instances where there is a need for involvement of the State legislature, three years may be

difficult for States whose legislature only meets every two years.

Another problem stems from situations where certain regulations pertain to areas that are sometimes outside of the direct control of the State Radiation Control Program Director, thus delays may exceed the three-year time period. Furthermore, "agreement materials" control is only part of the States' radiation control program and some States expressed the view that it is more efficient to revise the States' radiation control regulations completely rather than in a piecemeal fashion within the three-year timeframe.

The three-year interval has been based on what the States, generally, have been able to meet. Over the years the process by which states adopt regulations has undergone significant change. Some States are now required to go through a much more detailed process to amend their regulations. State management, their legal counsels and other non-radiation control staff are taking a more active role in reviewing proposed changes to State regulations. In many instances they look for their radiation control program to operate under the same policies and procedures as other public health and safety programs, such as hazardous materials. As a result, the process has become much more complex and a number of States have found it difficult to meet the three-year requirement.

Alternatives to codifying new regulations in less than three years should be addressed beginning with the early and substantial State involvement in the regulatory process, including changes to regulatory guides, standards, procedures, etc. This assures opportunity for timely input and allows the state to work on their own unique solutions simultaneously.

Implementing appropriate regulatory changes could be by any mechanism that works for the state. There should be recognition of the economic impact of regulation changes especially when the state has few or no licensees that may be impacted. While regulation changes should be encouraged for ease of comparison from state to state, any method, such as license condition, agency issued order, or some other unique approach may be acceptable provided the citizens are adequately protected. Any concerns of safety significance could be addressed within one year of notification while changes required in regulations, such as for meeting minimum national standards, should be accomplished within three years of the publication date of the final NRC regulation. Getting States up to speed with current regulation development is addressed under Issue 4 - Implementation.

If a time based implementation requirement is necessary, use of the publication date should be considered for the "starting point" since the final text of the rule is then known. However, it may be necessary to consider allowing States the same delay in the effective date of the regulation. This would allow State licensees the same "grace" period as allowed NRC licensees. The effective date of the regulation may also be given greater weight since protecting the public health and safety should be the focus of the rule and implementation is the key.

#### F. Scope of Policy

The last issue under the "basics" is "how far does one go in seeking to show that the core elements of radiation control programs are compatible?" Sections 274d.(2) and 274g. are the only sections of the Act that address the concept of compatibility. It should be noted that both sections refer to the compatibility of "programs." Section 274d. states that "The

Commission shall enter into an agreement under subsection b. of this section with any State if...the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials..." (Emphasis added.) The use of the word "program" rather than "regulation" indicates that the concept of compatibility was meant to apply to aspects of a radiation control program other than just the regulations. This might include the technical aspects of licensing actions and the State's compliance program. As examples, this could apply to criteria for approving certain licensed activities as detailed in NRC licensing guides or to such areas as the inspection priority system. It could also be interpreted to include administrative matters such as staffing level and budget. Also, the "whole program" approach allows agency to impose requirements by order, license condition or other method rather than be restricted to regulations.

Since the earliest days of the State Agreements Program the Commission has used the term "compatibility" in the review guidelines in relation to not only regulations, but also to such program areas as licensing and compliance. However, in recent practice only regulations have been considered as matters of compatibility during periodic reviews.

The question is how much of the State's program: regulations only, regulations plus certain program elements such as licensing and compliance, or the entire State program, should be reviewed by NRC and considered in determining "compatibility" with its national program?

## ISSUE 2 - FLEXIBILITY

What degree of flexibility should be afforded the Agreement States in carrying out their programs?

Agreement states, in addition to assuming regulatory authority over agreement materials, have the responsibility for ensuring public health and safety from ionizing radiation from such non-agreement sources as NARM (naturally-occurring and accelerator-produced radioactive materials) and machine-produced radiation. In some cases, regulation of non-ionizing radiation is also a mandated function. Such responsibility compounds the regulatory scheme for states since, in principle, all sources of radiation need to be regulated in an equivalent manner. The ability to implement within the confines of applicable law more complex radiation control programs requires a great deal of flexibility. Judgements regarding the performance of a regulatory program need to be both qualitative and quantitative.

The term "flexibility" as used in this document means the ability of any agreement jurisdiction to have a regulatory program which is able to address sources of radiation other than agreement materials, as well as local circumstances or concerns within the limits prescribed by federal, State or local law. Flexibility allows for innovations in regulatory program development. For the purposes of this discussion, a regulatory program can be divided broadly into two areas: regulations and other non-regulation policies, procedures, etc.

#### A. Regulations

From a practical perspective, only if there is a need to regulate a particular activity, should regulations be required. For example, states that will never host a low level radioactive waste disposal facility do not need to have regulations equivalent to 10 CFR Part 61. Likewise, an agency which legally does not have authority over a particular activity, as is the case in New York State where several agencies implement the

agreement, do not need to address that activity in regulations. Further, circumstances where only one or two licensees will be engaged in an activity should be considered for regulation by means other than formal rules. This can be judged on a case-by-case basis taking into account such factors as adequacy of protection of public health and safety, extent of the activity in scope and time and available resources.

#### B. Non-regulation aspects

However, it must be recognized that different jurisdictions have differing needs and responsibilities with respect to the regulated community served, demographics, location, geography and so forth. To a greater or lesser degree such factors will influence the regulatory approach taken and to achieve effective regulation, such factors must be integrated into the agency's programs. A potential avenue to accommodate this required flexibility is through policies and procedures which are not formal rules. These may govern such aspects of the program as licensing procedures, inspection frequency, enforcement actions, fees, or areas which have been addressed in regulation by NRC, but were not deemed "matters of compatibility" at either the Division 1 or 2 level under NRC Procedure B.7.

Given that basic standards equivalent to those of NRC have been promulgated by States, other guidance and policies will be bound by applicable regulation and law. Hence, this principle will guide the latitude of flexibility allowed. But within the confines of applicable law, consideration should be given to allow the regulatory agency freedom to implement its programs in the way it deems best and appropriate to protect public health and safety; however, this must be balanced against other factors, such as the effects on interstate commerce, effective



communications between regulatory bodies, and uniform recordkeeping.

### ISSUE 3 - COMMUNICATION

What licensee-regulator interactions should be shared through communications in order to build a reliable data base for evaluating the Agreement State and NRC radiation protection programs for source, byproduct, and less than critical quantities of special nuclear materials?

#### A. Communication Between Regulators

Agreement States and the NRC maintain independent regulatory programs. While there is a degree of autonomy required for the management of an independent program, these programs need to maintain open communications among each other to assure that their constituencies are receiving equivalent treatment. Since the institution of the Agreement States Program, State regulators have obtained increased experience with Atomic Energy Act materials and have gained additional experiences through regulations of NARM and machine-produced sources of ionizing radiation. The resultant maturing of State regulatory programs highlights the need for effective sharing of experience between State and Federal regulators. This sharing of experience could be at the levels of both the management and the technical staff. A forum for senior Agreement State and NRC officials could focus on communication, strategic planning, priority setting, and on improving coordination and cooperation in enforcement, while technical staff would address innovative approaches they have used or problems they foresee in licensing and inspecting users of radioactive materials.

Agreement State staffs and their NRC counterparts have increasingly used topical workshops to discuss solutions to common problems encountered in the regulation of radioactive materials. These workshops have supplemented the annual All Agreement States Meeting and the more routine interaction and communications with regional and headquarters State Programs staff. These workshops, meetings and All Agreement States letters have been the principal means of communication for NRC and the Agreement States.

There are a number of opportunities to improve the nature and amount of information moving between the NRC and the Agreement States. One is in the analysis of radiation-related events and incidents for early trends on the performance of individuals and equipment. Regulators should be aware of both poorly performing individuals and devices. This could include common standards for device evaluations, common reporting requirements for malfunctions and defects and a registry of individuals cited for significant wrongdoing.

#### B. NRC and Agreement States share "Good News"

NRC reviewers or States could identify State regulatory activities that are considered improvements in the program and disseminate that information to other states and NRC. Innovation is then recognized and put into use.

### ISSUE 4 - IMPLEMENTATION

How should the NRC involve the Agreement States in the rulemaking process to provide for meaningful early and substantive interaction? How should a new policy on compatibility be implemented? How should the performance of radiation control

programs be measured to see where improvements in real performance (protecting citizens) are needed?

The NRC is mandated in §274(j) to periodically review agreements and actions taken by states under the agreements to ensure compliance with the provisions of §274 of the Act. It can be argued that during periodic reviews formal regulations should be judged for equivalence of results (i.e. Do they achieve the same goal as NRC's regulations, although not necessarily with identical language?) and the remainder of the program judged to be adequate to protect health and safety. It can be safely assumed that if these two criteria are met, then the program will be adequate to protect health and safety and compatible with those of the NRC. There could be greater flexibility in the way the NRC reviews state programs, taking into account the wide variations in state programs and problems, and state efforts to be innovative and creative about problem resolution.

Agreement States' technical expertise and closer interaction with licensees could be used in a teamwork approach along with the NRC in developing new initiatives. Teams of managers and staff from many regulatory programs could work together to address the issues in a holistic fashion.

The importance of quality staff should also be emphasized. Basic qualifications and on-going training are important in assuring that the performance of the radiation control program is adequate to protect the public. Certification of staff could be achieved through the reviews now done by the NRC during program reviews or through a more formal training, testing, and certification program. However, rigorous staff qualification requirements could be problematic, especially if personnel rules or union contract provisions conflict with the certification concept.

A.) Early and substantive input on rulemaking

The present practice of Agreement State involvement in rulemaking through workshops and public meetings is on-going. Consideration should also be given to Agreement State early involvement in NRC policy and practices. The first step, however, is problem identification. (See also Issue 3 - Communication) Once a problem is identified it should be announced so others may contribute to possible solutions. This could be OSP, AEOD or the regions or Agreement States discovering and/or defining a problem. Someone would then take the lead in developing potential solutions (not limited to regulations). Details should be presented before asking for any decisions, even on policy or 'general direction'. This is because seemingly minor word changes can totally change the meaning of the material in question. An initial determination that a regulation may be a "matter of compatibility" will help focus attention on the rule, recognizing that the final decision by the Commission on the level of compatibility will not be determined until the rule is final. Closer, more substantive interaction with Agreement States could also be accomplished by establishing an Agreement State Advisory Committee, formally constituted under the Federal Advisory Committee Act. There are various issues on this subject that need to be discussed particularly addressing as to whether such an arrangement would inhibit the frequent communications between NRC and the Agreement States that are necessary to fulfill the expectations of the "partnership."

It is also important to consider the issue of whether Agreement State and NRC licensees are being provided with equal opportunities for fair and effective input into the rulemaking process. It was brought up that Agreement State licensees do not learn about proposed regulations until the Agreement State begins

the process to adopt the regulation, which in many instances is a "matter of compatibility" and not subject to change through licensee input. Therefore, for Agreement State licensees to have an effective and fair opportunity to consider regulations which will eventually be imposed on them, they should be made aware of the proposed regulation at least at the same time and in the same manner as NRC licensees.

#### B. Transition

--How should the new policy on compatibility be implemented? Over what time period?

--How should new regulations (ready to be published in final) and regulations in progress be handled?

--Impact on States actively pursuing an agreement with respect to implementation of the 1981 Commission policy statement as amended.

--Need to update State Programs. Internal Procedure B.7

--Need to review new regulations adopted since B.7 was formulated in 1984

C. What standing, if any, should the CRCPD - Suggested State Regulations for the Control of Radiation have in compatibility determination?

#### D. Program Review Areas Affected by the Scope of the Policy

The following Agreement State program review areas are identified where the degree of uniformity needs to be specifically addressed in implementing the policy.

1. Basic radiation protection standards. These are standards which have been developed and endorsed by national and international standards setting bodies such as NCRP, ICRP and IAE. These standards include, but are not necessarily limited to, the occupational (and in the new Part 20, general public) dose limit in 10 CFR Part 20, as

well as the maximum permissible concentration in effluents.

2. Important definitions. This would include terms such as dose, curie, radiation area, high radiation area, etc, that are necessary for the effective communication between radiation control personnel. This would also include radiation signs, radiation symbols, etc.
3. Radiation protection principles. These would include those requirements in 10 CFR Part 20 that address fundamental health physics practice, such as ALARA, requirements for radiation surveys, and personnel monitoring. These areas, although not necessarily established standards by standards setting bodies, are well established principles, acknowledged by experts in the fields of health physics as being part of any adequate radiation protection program. These are typically not numerical values, so that evaluation for uniformity is somewhat more difficult.
4. Indirect or secondary radiation protection standards. Some NRC regulations have indirect standards that are based on basic radiation protection standards. Examples are the limits on the transportation of radioactive materials.
5. Licensing policy and procedures. This is a broad category that encompass the decisions on how radioactive materials in regulated through the licensing process. This would include policy on licensing fees, exemptions, general licensing, and the criteria used for evaluating the training and experience of users, the equipment and facilities for using radioactive materials, and the procedures followed.
6. Compliance policy and procedures. This is a broad category including inspection practices, enforcement options, inspections priorities, etc. This concerns issues such as the consistencies of civil penalties applied by the Agreement States and NRC for the same violation.
7. Information requirements. There are many requirements such as, for example, reports of

incidents, overexposure, loss of material, etc.  
that are for information gathering purposes.

#### ISSUE 5 - REVOCATION

What are the legal, policy, health and safety bases for reasserting NRC authority in an Agreement State?

Section 274j(1) of the Atomic Energy Act of 1954, as amended, provides the basis for termination or suspension of an agreement, or part of an agreement, with a State, either at the request of the Governor or upon the initiative of the NRC, under certain circumstances:

(1) The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of this section.

The Commission has not formulated formal written criteria or procedures to implement these provisions. Neither has the Commission ever commenced action on its own initiative to terminate or suspend all or part of an agreement under section 274j(1). However the Commission has reasserted its regulatory authority at the request of the Governor over all or part of an

agreement in several instances. The transfer of regulatory authority was handled smoothly in each case.

The necessity for NRC to terminate or suspend an agreement on its own initiative has never arisen, in part because the Commission has relied on the many forms of interaction and cooperation with the Agreement States to provide early notice and resolution of any problems developing with a State program. In accordance with the last sentence of section 274j(1), the Commission conducts formal reviews of each State's regulatory program every two years and an informal visit in the alternate years when there is no formal review. The Commission makes a determination of "adequacy to protect the public health and safety" and "compatibility" regarding each Agreement State program.

Agreement State Programs have been evaluated based on the policy statement "NRC Review of Agreement State Radiation Control Programs, last amended and published at 57 FR 22495 (1992). The program review indicators identified in this policy statement are divided into Category I -Direct Bearing on Health and Safety and Category II - Essential Technical and Administrative Support. The application of the findings of a review and the determination of adequacy to protect the public health and safety to the termination or suspension of an agreement is discussed as follows in the policy statement:



In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the public health and safety and that the need for improvement in a particular program is critical. The NRC would request an immediate response. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act.

The compatibility of the State's regulations with the NRC program is also considered in the review under the policy statement procedures:

The NRC feels that it is important to strive for a high degree of uniformity in technical definitions and terminology, particularly as related to units of measurement and radiation dose. Maximum permissible doses and levels of radiation and concentrations of radioactivity in unrestricted areas as specified in 10 CFR part 20 are considered to be important enough to require States to be essentially equivalent in this area in order to protect public health and safety.

Certain procedures, such as those involving the licensing of products containing radioactive material intended for interstate commerce, also require a high degree of uniformity. If no serious performance problems are found in an Agreement State program and if its standards and program procedures are compatible with the NRC program, a finding of adequacy and compatibility is made.

The second criterion in section 274j(1) for termination or suspension of all or a part of a state agreement is "the State has not complied with one or more of the requirements of this section" [section 274]. The NRC legal interpretation of that section concludes that sections 274d(2) and 274g encompass a continuing requirement for an Agreement State program to remain compatible with the NRC regulatory program. Therefore a finding that an Agreement State program is not compatible could theoretically serve as cause to terminate or suspend an agreement under 274j(1). As stated earlier, the Commission has never commenced any action on its own initiative under section 274j.

Several Agreement States disagree with NRC's legal interpretation, holding instead that "compatibility" relates to the initial status of the Agreement State regulatory program and that, once an agreement is signed, compatibility takes on the nature of a goal towards which the Agreement State pledges its "best efforts".

Under section 274j(2) the Commission also has authority to temporarily suspend all or a part of an agreement under certain circumstances:

(2) The Commission, upon its own motion, or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the public health and safety of persons either within or outside of the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

Although there is no Commission policy statement or set of procedural rules interpreting this provision, the Office of State Programs has an internal procedure, D.13 Guidelines for Temporary Suspension of a Section 274b Agreement, which sets forth some criteria for applying the emergency temporary suspension described in section 274j(2). As stated within the procedure, the authority to temporarily suspend an agreement would be invoked only in a very unusual emergency situation resulting in exposures or releases greater than a stated magnitude<sup>1</sup>, after

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<sup>1</sup> The minimum levels are (1) Exposure of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual to 150 rems or more of radiation; or exposure of the feet, ankles, hands or forearms of any individual to 375 rems or more of radiation; or equivalent exposures from internal sources; or (2) The release of

considering the adequacy of the actions taken by the State, the urgency of temporarily supplementing the State's capability, and the timeliness of the State's response. The State would be kept fully informed of NRC actions and would be promptly informed that the temporary suspension is no longer in effect when the conditions which initiated the suspension no longer exist.

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radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, would exceed 5,000 times the limits specified for such materials in Appendix B, Table II of 10 CFR Part 20.