

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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COMPATIBILITY POLICY

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON OPTIONS FOR AGREEMENT STATE
COMPATIBILITY POLICY

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, January 24, 1994

The Commission met in open session,
pursuant to notice, at 2:00 p.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

FRED COMBS, Chief, Operations Branch, NMSS

SHELDON SCHWARTZ, Deputy Director, Office of State Programs

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

CARDELIA MAUPIN, Office of State Programs

FRANCIS CAMERON, Office of the General Counsel

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

2:00 p.m.

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

The Commission is meeting to receive a briefing from the staff on the draft policy statement for agreement state adequacy and compatibility. As I'm sure many of you know, the agreement state program is the cornerstone of our overall program for regulating commercial possession and use of nuclear materials. Section 274 of the Atomic Energy Act has authorized the Commission to enter into the 29 existing state agreements by which we discontinue our regulatory authority and a state asserts its own.

However, this statute uses the terms "compatible and adequate to protect the public health and safety, fundamental requirements," but which are not defined in the Act. Therefore, among other initiatives to review the overall effectiveness of the agreement state program, the Commission asked the staff to develop options for and examples illustrating the application of a new compatibility policy that would contain the right balance of uniformity and flexibility. The policy must allow the Commission to make the required findings under Section 274 of the

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1 Atomic Energy Act and must also allow the states a
2 degree of regulatory flexibility to address local
3 concerns.

4 Speaking for myself and I think for the
5 Commission, we're quite pleased with the
6 responsiveness of the staff completing a thoughtful
7 draft policy paper in a timely manner. I believe this
8 is sort of the largest step forward conceptually in
9 distinguishing between adequacy and compatibility that
10 we've had since the program began. But as is true any
11 time a new start is made, there are some questions
12 arise as we try to break some new ground. We're very
13 interested to hear what you have to say.

14 Commissioners?

15 COMMISSIONER ROGERS: Just to what extent
16 this paper applies or does not apply to low-level
17 waste questions isn't clear. I don't think that's
18 actually stated in here, whether it is part of the
19 considerations that went into the paper or whether the
20 low-level waste was to be considered separately.

21 MR. TAYLOR: Well, we'll try to address
22 that, sir.

23 COMMISSIONER ROGERS: All right.

24 MR. TAYLOR: Good afternoon. With me at
25 the table are Dick Bangart, head of the Office of

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1 State Programs and the members of the Compatibility
2 Working Group, which was chaired by Shelley Schwartz.

3 The issues in this paper that you will
4 hear about today were discussed with the agreement
5 states at the all agreement state meeting the end of
6 October in Tempe, Arizona. The approach was discussed
7 with them. What we would be seeking from the
8 Commission is publication of our proposals for public
9 comment and once you agree to that we would conduct a
10 public meeting to discuss the policy statement with
11 agreement states, industry, affected industry and the
12 public.

13 Shelley Schwartz did chair this group and
14 I'll now ask him to begin the formal presentation by
15 walking you through the major policy issues and
16 related background.

17 Shelley?

18 MR. SCHWARTZ: Yes, thank you, Jim.

19 Good afternoon, Mr. Chairman and members
20 of the Commission. As Jim says, we're here to discuss
21 with you the staff's proposal on a new policy for
22 agreement state adequacy and compatibility. I'd like
23 to note that the regions and also agreement states are
24 monitoring this briefing right now.

25 (Slide) Viewgraph 2, please.

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1 Here's an outline of the information I
2 will be providing you during this briefing. This
3 briefing tracks with the information provided in SECY-
4 93-349 which recommends that the Commission approve a
5 draft policy statement and publish it in the Federal
6 Register for a 90 day comment period.

7 (Slide) Viewgraph 3, please.

8 Past agreement state compatibility
9 concerns were expressed in their task force report.
10 There was an organization of agreement state task
11 force report in 1991 and I think they can best be
12 characterized by five questions that were conveyed to
13 us by Tom Hill when he was Chair of the Organization
14 of Agreement States. Those questions are what is the
15 meaning of compatibility, to what does compatibility
16 apply to regulation provisions, totality of all
17 radiation program elements, administration of the
18 program, et cetera. Third, how is it implemented at
19 NRC's discretion as a joint effort or is there yet
20 some other approach which has not been determined?
21 Fourth, what is the legislative and historical
22 background of the issue and has that frame of
23 reference been used in carrying out the NRC AEC
24 agreement state program since 1962? And fifth, most
25 importantly, how does the implementation of

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1 compatibility relate to protection of the public
2 health and safety?

3 I think those issues and others were
4 addressed in two other Commission papers, SECY-91-039
5 and SECY-92-243 which was the basis for the
6 recommendation by the Commission to establish a
7 working group and directed the staff to then develop
8 this compatibility policy.

9 As Jim mentioned, the working group was
10 established and the individuals seated at this table,
11 Chip Cameron, Nick Costanzi, Fred Combs, myself,
12 Cardelia Maupin were on that working group and we also
13 had information from agreement state individuals and
14 these were the offices of the Organization of
15 Agreement States, Wayne Kerr of the State of Illinois,
16 Bob Kulikowski of the City of New York and also Terry
17 Frazee from the State of Washington. We also had the
18 benefit of Mr. Gerald Parker's assistance and he was
19 a retired Assistant Commissioner of Health from the
20 State of Massachusetts. I want to make sure Tom Hill
21 was also represented on the group.

22 We've had a number of public meetings and
23 workshops which culminated in a briefing to the
24 Commission on August 30. It was principally on the
25 issues paper that was developed by the group and also

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1 some draft thoughts that we had about what a
2 compatibility policy ought to be. On October 20th,
3 1993 in SECY-93-290, we provided the Commission our
4 initial thoughts on alternatives for an agreement
5 state policy which we then discussed with the
6 agreement states at their October meeting in Tempe,
7 Arizona.

8 (Slide) Slide 4, please.

9 In order to understand compatibility, we
10 reviewed Section 274, the history of how the agreement
11 state program matured and its relationship with AEC
12 and NRC. In reviewing these and the agreements, the
13 following principles seem evident. It recognizes the
14 interest of the states in regulating these materials,
15 it recognizes the need for cooperation between the
16 Commission and the states to promote an orderly
17 regulatory pattern between the Commission and the
18 states. I classify that as trying to have a national
19 coherent policy program for the regulation of these
20 materials. To provide for coordination of the
21 development of radiation standards and other policies
22 and, finally, that NRC must review the adequacy and
23 compatibility periodically to carry out the mandate
24 under Section 274.

25 (Slide) Viewgraph 5, please.

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1 In these discussions with the various
2 groups of stakeholders in this policy and in this
3 business, the states have said more than once that
4 they would like flexibility with a minimum number of
5 requirements for compatibility and uniformity for
6 interstate commerce as well as for radiation
7 standards, and that there be early and substantive
8 involvement of all agreement states in the development
9 of regulations and policies and procedures.

10 The regulated community desires strict
11 adherence to uniform national standards while the
12 environmental community recognized that federal and
13 state requirements they believe are minimums and
14 therefore there should be flexibility to adopt more
15 stringent requirements.

16 COMMISSIONER de PLANQUE: Shelley, the
17 paper would suggest that that was just a single
18 environmental group. Was that the case or do you
19 recall?

20 MR. SCHWARTZ: Well, if I remember, there
21 was Judith Johnsroot and Susan Hyatt and there were a
22 few other people there who I can't say represented all
23 of those groups, but that was the sense that I think
24 I received at that meeting. I'd like to turn to
25 others, Chip or anybody else who was there.

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1 MR. CAMERON: I think that's the viewpoint
2 that we've seen from the environmental community
3 generally is that the states should have the authority
4 to set stricter standards.

5 MR. SCHWARTZ: (Slide) Viewgraph 6,
6 please.

7 Since we believe -- and "we" I'm talking
8 about the working group and the staff. Since we
9 believe for clarity it was necessary as best we could
10 to differentiate between adequacy and compatibility,
11 that is to define what is necessary beyond public
12 health and safety, and a need to provide
13 predictability and to have a coherent distinction that
14 would eliminate what is a perceived arbitrariness
15 today of the current compatibility determinations.
16 So, we would say that the adequacy component provides
17 for an acceptable level of protection for public
18 health and safety in an agreement state and the
19 compatibility component provides for the overall
20 national interest in radiation protection.

21 (Slide) Viewgraph 7.

22 The adequacy component requires that the
23 level of protection of public health and safety be
24 equivalent to or greater than that provided by the
25 NRC. It would not require that NRC requirements be

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1 implemented essentially verbatim or through a
2 particular mechanism such as a regulation unless one
3 of the compatibility criteria, which I'll discuss a
4 little bit later --

5 CHAIRMAN SELIN: You definitely should
6 just stop after particular mechanisms such as a
7 regulation, period, because the rest has to do with
8 compatibility, not with --

9 MR. SCHWARTZ: Understand.

10 CHAIRMAN SELIN: You know, not with
11 adequacy. Basically I think you've really -- the
12 group is really to be commended on making clear that
13 compatibility isn't just a higher standard than
14 adequacy, but it's a different dimension. Adequacy is
15 that which is required if there were only one state
16 and that state were running a program, what would we
17 require of that state for the citizens of that state
18 to be protected? Then compatibility says, in addition
19 to that, because there are many states, the national
20 interest may require that certain things be all done
21 in the same way. We may not even care which way it's
22 done as long as they're all done in the same way. So,
23 we can have common definitions, common reporting
24 requirements, protection of interstate commerce, et
25 cetera. You really have that idea pat, but make sure

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1 of your definitions. Don't mix them back up again.

2 MR. SCHWARTZ: I understand. Thank you,.

3 The concept is only certain elements need
4 to be compatible -- maybe I'm going back, but I want
5 to draw that line -- or essentially identical with
6 adequacy being a qualitative judgment on the
7 effectiveness of the program.

8 (Slide) Viewgraph 8.

9 Adequate means an acceptable level of
10 protection of the public health and safety from the
11 radiation hazards associated with the use of
12 byproduct, source and special nuclear materials.

13 (Slide) And Item 9 then, an adequate
14 agreement state program means an effectively
15 implemented regulatory program containing elements,
16 regulations, policies and procedures considered
17 necessary by the Commission to provide an acceptable
18 level of radiation protection for the public health
19 and safety from the radiation hazards associated with
20 the use of byproduct, source and special nuclear
21 materials, recognizing that these details will need to
22 be developed after the Commission approves this
23 concept.

24 COMMISSIONER de PLANQUE: Let me just stop
25 a minute and make sure I clearly understand something,

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1 taking off from your comment. Do you anticipate that
2 there will be any regulations that you would require
3 the states to have verbatim in order to find them
4 adequate?

5 MR. SCHWARTZ: No, we do not.

6 COMMISSIONER de PLANQUE: None?

7 MR. SCHWARTZ: Right.

8 COMMISSIONER de PLANQUE: Okay.

9 MR. SCHWARTZ: That's the concept.

10 (Slide) Item 10.

11 Item 10 are example elements of an
12 adequate program. These example elements would derive
13 from three sources. One is the Commission policy on
14 becoming agreement states, the new agreement state
15 policy. The second the policy statement on review of
16 existing agreement states, and third we've got the
17 parallel effort going on on the integrated materials
18 performance evaluation program. So we've tried to
19 comport what we have here with the new effort and I
20 understand that paper has been signed out by the EDO
21 to you.

22 I'm not sure I need to go through the
23 details of the individual -- it was dealt with in the
24 Commission paper itself. I wasn't planning to go
25 through all the individuals, but I will point out that

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1 if the inspection program, enforcement program,
2 staffing and personal qualifications, licensing
3 program and investigation are elements that are
4 similar, maybe not titled the same way to the five
5 basic elements which we call programmatic indicators
6 in the integrated material as common performance
7 indicators.

8 CHAIRMAN SELIN: I would like to come back
9 to just a fairly minor point.

10 MR. SCHWARTZ: Yes, sir.

11 CHAIRMAN SELIN: As you said before, Mr.
12 Schwartz, adequate means adequate to protect the
13 public health and safety. The agreement states have
14 argued, for instance, it's none of our business if it
15 takes them three years to get a license out. That
16 might affect commerce in that state, it might be
17 unfair, but nobody's health and safety is affected if
18 they're too slow rather than fast enough. Whereas on
19 timely renewal, if they're too late to get timely
20 renewal, that means that people are operating with an
21 obsolete license and one could be concerned that
22 health and safety is protected.

23 So, a lot of things that -- it's a
24 plausible argument, but a lot of things that one
25 thinks of as being part of an adequate program are cut

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1 out by your definition, which is okay. At least it's
2 not intrinsically -- but I think we should understand
3 that a good program, a program that meets the
4 intuitive concept of adequate will require much more
5 than adequacy to meet health and safety. And our
6 definition just is exactly what you said it is, that
7 a citizen in one of these states will be protected at
8 least as well as a citizen in an NRC-regulated state.
9 He or she may pay too much for it, may suffer
10 financial dislocation, may be inconvenienced or what
11 have you in order to get that piece and the program
12 can still be adequate. Then comes the question of how
13 much of that weight do we want to put into compatible.

14 MR. SCHWARTZ: That's the concept.

15 COMMISSIONER de PLANQUE: Shelley, I
16 thought the paper had included administrative
17 procedures and budget in this kind of listing. Did I
18 read something wrong?

19 MR. SCHWARTZ: I think the paper may have
20 covered that, but we have downplayed the importance of
21 the administrative nature of getting involved in that
22 as an area of major significance for public health and
23 safety.

24 COMMISSIONER de PLANQUE: I like the
25 conclusion. I just wondered about the inconsistency.

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1 MR. SCHWARTZ: It's an evolving --

2 COMMISSIONER de PLANQUE: Okay.

3 MR. SCHWARTZ: It's an evolving process,
4 Commissioner.

5 COMMISSIONER de PLANQUE: So noted.

6 CHAIRMAN SELIN: But then again, if the
7 state's performance from a health and safety point of
8 view is adequate, they will argue it's none of our
9 business what their resources are.

10 COMMISSIONER de PLANQUE: That's right.

11 MR. SCHWARTZ: That's right.

12 CHAIRMAN SELIN: And it's only if it's
13 not, in which case it's not a criterion, it's an
14 indicator, it's a performance indicator. So, as
15 Commissioner de Planque implies, that's not
16 inconsistent at this point.

17 MR. BANGART: Let me just add, the paper,
18 I think, talks about procedures in the context of
19 procedures to promulgate rules and that kind of thing.
20 We were concerned that if we had a bullet here that
21 talked about administrative procedures, it would be
22 viewed as more comprehensive. We don't intend to go
23 into detail into minor day to day operational
24 procedures unless there's a problem that surfaces
25 reviewing a more direct adequacy indicator. So, that

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1 was the reason for the slight discrepancy.

2 COMMISSIONER de PLANQUE: On the
3 laboratory support bullet, I believe the paper
4 indicated that the laboratory support had to be within
5 the state, not just available to the state. Was that
6 what you intended?

7 MR. SCHWARTZ: Yes. We intended something
8 available to the state. I don't think we are going to
9 get involved. If the intention is -- if the read is
10 that it says in the state, I think in my view that's
11 the wrong impression. It should be available to the
12 state so that they can evaluate what their findings
13 are and their readings are.

14 COMMISSIONER de PLANQUE: So essentially
15 it could be some sort of contractor facility that's
16 available to them and that's acceptable?

17 MR. SCHWARTZ: That would be responsive,
18 particularly in emergency situations. That would be
19 responsive to their needs. It's a pretty high
20 threshold, I would say.

21 (Slide) Eleven.

22 Moving on to compatibility, compatibility
23 component focuses on state action or inaction that
24 would have extra territorial impacts either on other
25 states or on the effectiveness of the national

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1 program. It requires the essentially identical
2 adoption of certain elements of the NRC regulatory
3 program.

4 (Slide) Viewgraph 12, please.

5 Compatibility therefore means the
6 consistency between NRC and agreement state regulatory
7 programs which is needed in order to establish a
8 national radiation protection program for the
9 regulation of byproduct, source and special nuclear
10 material which assures an orderly and effective
11 regulatory pattern in the administration of this
12 national program. Compatibility shall be aimed at
13 ensuring that the flow of interstate commerce is not
14 impeded, that effective communication of the radiation
15 protection field is maintained, that central radiation
16 protection concepts applicable to all licensees are
17 maintained, and that information needed for the study
18 of trends in radiation protection and other national
19 program needs are ascertained and made available.

20 CHAIRMAN SELIN: This suggests, it doesn't
21 say but it suggests that the burden of proof would be
22 on us to require something to be compatible to show
23 that one of these four objectives would be
24 significantly enhanced by requiring compatibility of
25 some objective.

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1 MR. SCHWARTZ: Yes, that's correct.

2 (Slide) Therefore, in that context,
3 viewgraph 13.

4 In that context, a compatible agreement
5 state program means a regulatory program containing
6 elements, regulations, policies and procedures
7 considered necessary by the Commission to effectively
8 implement the term "compatible" as previously defined.

9 COMMISSIONER ROGERS: Just before you
10 leave that.

11 MR. SCHWARTZ: Yes, sir.

12 COMMISSIONER ROGERS: I noticed in the
13 paper it wasn't clear to me what elements were,
14 whether elements -- my impression was that elements
15 included regulations and policies. In the past the
16 term, I think, has been used to sort of imply that
17 elements included regulations and policies. But the
18 paper seems to draw a distinction between elements,
19 regulations, policies and procedures and then, in
20 fact, in some places, particularly in the
21 compatibility area, refers to only part of that list.
22 I want to come to that later on during -- when we come
23 to it. But what is an element as distinct from a
24 regulation of policy or a procedure?

25 MR. SCHWARTZ: Commissioner, I would view

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1 an element I could say as a program. I'll use an
2 example perhaps of the seal source and device program
3 where that is an element of the regulatory program and
4 you'd need the regulations. Perhaps if the Commission
5 so deemed, we would also require certain requirements
6 for the individuals in the program so that the states
7 because interstate commerce can be affected in the
8 sealed source and device area, that we require
9 essentially an identical program and that's an element
10 that encompasses the rules, regulations, standards and
11 everything necessary to carry out the same degree
12 depth of program that the NRC does for that particular
13 class of licensees.

14 Maybe we've been inarticulate in
15 describing it, but I think that's the concept.

16 COMMISSIONER ROGERS: Well, it isn't clear
17 in the document what an element is as distinct -- I
18 mean I think a regulation is clear, a policy and a
19 procedure probably are clear, but an element is not
20 clear. I think there needs to be some explanation of
21 that.

22 COMMISSIONER REMICK: Shelley, adding to
23 that, on your slide 10 you have a regulation as
24 example of one type of element. So, there you're
25 using it as an example of an element. Here you're

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1 using it as something separate from an element, I
2 guess. Just some confusion.

3 CHAIRMAN SELIN: Is it material, all of
4 whose atoms had the same number of protons?

5 MR. TAYLOR: No, that's not what we had in
6 mind.

7 Go ahead, Shelley.

8 MR. SCHWARTZ: Thank you.

9 (Slide) Slide 14, please.

10 To build national uniformity on
11 requirements with extra territorial impacts that were
12 necessary for the national program, existing and new
13 requirements would be subject to the following
14 compatibility tests to determine if they should be
15 adopted essentially verbatim by the agreement states,
16 whether adoption is necessary to avoid a significant
17 burden on interstate commerce, and I use the sealed
18 source and device example there. To ensure clear
19 communication on fundamental radiation protection
20 terminology, and I think in the paper we've discussed
21 the definitions of byproduct material and also total
22 effective dose equivalent. To ensure clear
23 communication and common understanding as to certain
24 central radiation protection concepts applicable to
25 all licensees, principally standards for radiation

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1 dose limits for workers and members of the public, and
2 finally to assist the NRC in evaluating the
3 effectiveness of the overall national program for
4 radiation protection. I view this again in the
5 integrated materials performance evaluation program
6 spaces. These will be kind of like the operational
7 indicators, I believe, that would fit into the overall
8 national picture of what we're trying to ascertain as
9 to a national program.

10 COMMISSIONER REMICK: Shelley, I would
11 argue that your policy statement makes the argument
12 for an additional bullet there and that would be
13 basically to ensure that a practice is not discouraged
14 without adequate environmental or safety basis. You
15 don't have that as a bullet in the policy statement,
16 but you make that point very strongly. It seems to me
17 that that is certainly a legitimate criteria.

18 MR. SCHWARTZ: Commissioner Remick, I
19 agree that it's a legitimate criteria, and I think
20 we've discussed that as being the test for whether it
21 can be more stringent.

22 COMMISSIONER REMICK: Well, your actual
23 words, you used bar or preclude.

24 MR. SCHWARTZ: That's correct.

25 COMMISSIONER REMICK: I think those are

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1 too strong. That's too high a threshold. People can
2 do things to discourage the use of a practice which
3 otherwise might be deemed adequately safe and
4 environmentally acceptable, but not necessarily barred
5 or precluded. In my mind, those are too strong, too
6 high a threshold. That's why I very carefully used
7 the word "discourage." I think we have to be careful
8 that people don't use the flexibility to discourage
9 practices which otherwise would be acceptable. You
10 make the case for it in the argument, but you don't
11 have it as a bullet.

12 MR. SCHWARTZ: Right.

13 COMMISSIONER REMICK: And I'm afraid it
14 might be lost.

15 MR. SCHWARTZ: (Slide) In the criteria.
16 We do deal with it in the next viewgraph, viewgraph
17 15, where we deal with it in what is the balance of
18 uniformity and flexibility in this policy that we're
19 proposing. That is if none of the criteria for
20 identical requirements for compatibility is met, the
21 state would have the flexibility to design its
22 programs to meet local needs and conditions as long as
23 the program is adequate, again with adequacy being the
24 program defined by the Commission as having the
25 regulations, policies and programmatic elements and

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1 procedures that are necessary for adequacy.

2 To meet local needs and conditions, states
3 for particular classes of licensees adopt more
4 stringent radiation protection standards provided that
5 the basic dose standards for all licensees are
6 essentially identical to NRC's, that the dose does not
7 bar a practice or preclude a practice without an
8 adequate safety or environmental basis or bar a
9 practice needed in the national interest. We would
10 request the states to submit proposed more stringent
11 requirements to the NRC for Commission review and
12 approval.

13 CHAIRMAN SELIN: Let's to back to that bar
14 the practice. Let's say our regulations allow shallow
15 burial or engineered facility burials. Let's say
16 states don't like shallow burial. Why can't they bar
17 shallow -- unfortunately that's a low-level waste in
18 the state authority. But that kind of an issue. I
19 mean why couldn't the states bar that practice
20 according to the four criteria that you have on the
21 previous page?

22 MR. SCHWARTZ: I think what we're saying
23 is they could, but they had to provide the
24 demonstration that there was an adequate basis for
25 that.

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1 CHAIRMAN SELIN: I happen to think that
2 that might be a good practice, but it's not consistent
3 with your criteria. According to your criteria, all
4 they would have to do was show that they don't cite a
5 health and safety issue. I mean they don't claim that
6 25 millirem is good enough for the other states, but
7 there's a health and safety difference or that there's
8 an impact in interstate commerce or what have you.

9 COMMISSIONER de PLANQUE: But in this case
10 is the practice shallow land burial or is the practice
11 waste disposal?

12 MR. SCHWARTZ: Right.

13 CHAIRMAN SELIN: Well, that's not a
14 practice, that's a whole function.

15 MR. SCHWARTZ: Right.

16 CHAIRMAN SELIN: Is that what you're
17 talking about?

18 MR. SCHWARTZ: Yes. I think what we're
19 really talking about is we do not want the states to
20 make -- we don't think it's right for the states to
21 make more stringent regulations such that a practice
22 is barred from that state so that impact will then be
23 shifted to someone else.

24 CHAIRMAN SELIN: I see. That's not what
25 practice means to me. I misunderstood what you're

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1 saying.

2 MR. SCHWARTZ: That's the point we're
3 trying to make here.

4 CHAIRMAN SELIN: Well, you'd better be
5 careful because if there were three ways of doing
6 something and the state for some reason decides that
7 two of them were acceptable but the third has cultural
8 problems in their state and they just don't want you
9 to do that, that's a practice that you would be
10 barring and I don't think you mean that.

11 MR. SCHWARTZ: The point is well taken.
12 Thank you.

13 CHAIRMAN SELIN: But following
14 Commissioner de Planque's point, we wouldn't sanction
15 something that basically says we won't solve our own
16 problems. You'll need to get some other state to
17 solve our problems.

18 COMMISSIONER de PLANQUE: Shelley, can you
19 give me an example of what local needs and conditions
20 would be that are justifiable on a safety and
21 environmental basis? Any examples?

22 MR. SCHWARTZ: We've discussed that and I
23 guess I'd give the example of perhaps the state is
24 looking at an incinerator perhaps in a particular
25 area, and looking at the emissions from the

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1 incinerator, taking all other things in that
2 particular local area, whether it be NARM and other
3 practices going on in that area. They might for that
4 particular facility decide that they did not want to
5 have the same dose to the public, dose to the workers
6 that other facilities have. And therefore, looking at
7 the aggregate, they would decide to reduce it in that
8 particular area.

9 COMMISSIONER de PLANQUE: But in that
10 state then, would that apply to that class of
11 licensee? In other words, all incinerators?

12 MR. SCHWARTZ: Yes. That's the way it's
13 currently projected.

14 COMMISSIONER de PLANQUE: But wouldn't
15 that then preclude a practice?

16 MR. SCHWARTZ: Well, not necessarily.

17 COMMISSIONER de PLANQUE: Namely
18 incineration as a method?

19 MR. SCHWARTZ: Not necessarily. If the
20 facility continues to operate, but not make it so low
21 that it drives that facility or that practice out of
22 the state, but at the point that they make the balance
23 because of local conditions in that particular
24 geographical area.

25 CHAIRMAN SELIN: Can I say something?

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1 COMMISSIONER de PLANQUE: Yes, go ahead.

2 CHAIRMAN SELIN: This is an extremely
3 important point and you've answered the same questions
4 two different ways under two different questions from
5 the Commission. One time you haven't said that the
6 practice has to be justified on health and safety, you
7 just had to say it's not inconsistent with our NRC
8 standards, interfere with interstate commerce, et
9 cetera. And another time you said it has to have a
10 health and safety justification. In one case,
11 practice is getting rid of low-level waste and in the
12 second case it's incinerating it.

13 Without saying how I believe, looking at
14 your statement, it seems to me that if a state said,
15 "We just don't like incineration. We will permit you
16 to bury but not to incinerate. And furthermore our
17 citizens so much dislike incineration that we're
18 willing to either pay or impose on providers in our
19 state a higher cost for burial. We still allow you to
20 get rid of the waste. We don't claim that it's a
21 health and safety hazard, but we just won't permit you
22 to incinerate in our state." So, there's an economic
23 disadvantage, but maybe they say politically that's
24 what it takes to get a site approved in our state.
25 According to these standards, that would be

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1 permissible.

2 When Commissioner de Planque asked you
3 basically that question you said it would not be
4 permissible. I think it's very important that we
5 understand what would be permissible and what
6 wouldn't. When you get into these questions where the
7 NRC -- let me put it in a more strong point. The NRC
8 does not agree that there's a health and safety reason
9 for a particular practice. We would accept any of
10 several practices. The state chooses for its own
11 reasons, but not based on a reading of a health and
12 safety thing, to permit some versions of the practice
13 and either prohibit or make more costly other versions
14 of the practice. Is that permissible under this
15 compatibility policy or not?

16 I think incinerators are a fine example of
17 that. It would be one thing to say, "We'll allow
18 incinerators except not in downtown heavily populated
19 areas. That's an air quality issue." Another one
20 says, "We just don't like incinerators for radioactive
21 materials. We just won't permit them. You'll have to
22 do something else. But we won't set the standard so
23 high that as a practical matter you can't disposal of
24 waste in our state."

25 We need to understand whether these

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1 standards as the group intends them would permit in
2 this case the effective barring or taxing of
3 incineration or the setting of an air quality standard
4 that's higher than the national standard which
5 increases the cost relative to some other procedure.

6 COMMISSIONER de PLANQUE: Which then makes
7 it an economic or political determination, not a
8 health and safety one.

9 CHAIRMAN SELIN: But, you know, it would
10 be a disadvantage. Now, if they raise it to the point
11 where it's just so economically impossible to dispose
12 of waste, not to incinerate it but dispose of waste,
13 then we would say that's just a ruse for shifting your
14 waste onto your neighbors.

15 MR. SCHWARTZ: Somewhere else.

16 CHAIRMAN SELIN: But if they're willing to
17 do something but they're going to run the cost of
18 doing it at a higher point, that's the example that I
19 think needs to be --

20 MR. SCHWARTZ: Understand. I did shift
21 over to health and safety and I should not have
22 because that's not what we're proposing.

23 COMMISSIONER de PLANQUE: It's not quite
24 clear then what you're proposing.

25 MR. SCHWARTZ: I agree with you,

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1 Commissioner.

2 MR. CAMERON: The example that I think
3 Shelley was trying to convey with the incinerator was
4 not the prohibiting of the practice of incineration,
5 but rather then point that you made, Doctor Selin,
6 about the particular background air quality in a
7 particular area causing you to have a more stringent
8 release limit for a particular type.

9 CHAIRMAN SELIN: That's not the case I'm
10 concerned about. I mean there you're going to argue
11 that there are other standards in addition to
12 radiation standards that are environmental. I'm
13 trying to get back to the more general point where the
14 government or state X just decides really that he
15 believes he can get burial evolved, but that the
16 citizens are so against incineration that in order to
17 keep the program he's going to make it impossible to
18 do incineration but not to do burial. He's got very
19 good reasons. They're not health and safety reasons
20 in a narrow sense. They may be health and safety in
21 a broader sense and saying that, "The health and
22 safety of my citizens would be better affected if I
23 find something that's politically acceptable than if
24 I don't," but that's a very tough argument to make.

25 Is such a practice acceptable under your

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1 compatibility standards or not? That's something you
2 really have to think about. To me it's clearly
3 acceptable the way you've written it.

4 MR. SCHWARTZ: That's what's intended.

5 CHAIRMAN SELIN: Sorry?

6 MR. TAYLOR: Wouldn't that be essentially
7 barring your practice?

8 CHAIRMAN SELIN: Well, I mean, that's why
9 I pressed for what you mean by practice. If practice
10 means to get rid of low-level waste, it doesn't bar
11 it. If it means that among the ways that are
12 acceptable to the NRC of getting rid of low-level
13 waste, the state will permit some and prohibit some,
14 but not have such a drastic approach that is a de
15 facto basis. You can't get rid of the waste in the
16 state. That's the essence of compatibility.

17 MR. SCHWARTZ: That's the essence of what
18 we're trying to drive.

19 COMMISSIONER de PLANQUE: But then you
20 wind up using a radiation protection standard or
21 emission standards to force an economic or political
22 decision and then you have to ask the question is that
23 in keeping with the national good as you've defined
24 it. You're using one function to force another.

25 MR. TAYLOR: That's what we're trying to

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1 avoid.

2 COMMISSIONER de PLANQUE: Right.

3 MR. SCHWARTZ: Right.

4 COMMISSIONER de PLANQUE: So, I think the
5 key here is whether or not you say in your policy
6 there's an adequate safety or environmental issue or
7 not.

8 CHAIRMAN SELIN: Let me take another
9 example. Again, this is low-level waste and I realize
10 that the statutory base for the states for low-level
11 waste is different. But if a state decides that there
12 are some sites, but the local farmers won't let us
13 build a site unless we set a one millirem rule, not a
14 standard. We never claim that health and safety
15 requires one millirem, but we say we will require that
16 emissions be held below one millirem and that's what
17 the governor feels is the price for the local people
18 accepting the site. Does that or doesn't that not
19 violate your compatibility standard?

20 COMMISSIONER de PLANQUE: We're now at the
21 heart of the issue. You knew we'd get there.

22 CHAIRMAN SELIN: If you said a hundredth
23 of a millirem, then he clearly doesn't want to build
24 it and he's just using it. But if it's something
25 that's not so unreasonable that you could just off the

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1 top say, well, that's clearly just a stratagem to
2 avoid building the site in the first place, does your
3 view of this compatibility policy -- now, I apologize
4 that I could only come up with a low-level waste
5 standard. I wish I could have thought of one in site
6 decommissioning or something.

7 MR. CAMERON: I think that that example
8 would be squarely within the policy.

9 MR. SCHWARTZ: That's correct, that would
10 be within the policy.

11 CHAIRMAN SELIN: Let me ask a different
12 example.

13 MR. TAYLOR: And they come to us to review
14 it.

15 CHAIRMAN SELIN: Okay. Let's say that we,
16 for the sake of argument, chose a 25 millirem or 10
17 millirem standard for unconditional release of a
18 decontaminated site and a state decided that whatever
19 reasons for peace with the local citizens, that they
20 would require people to come down to a five millirem
21 or a one millirem basis before they would agree that
22 a site could be released. But it's not such an
23 unreasonable level. You could get the level and you
24 could measure it, but it would cost people more to do
25 it. Do you consider that within the state's authority

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1 under your compatibility statement?

2 MS. MAUPIN: If I could answer that
3 question. I would say yes, more so under the adequacy
4 issue because under adequacy we would give the states
5 the opportunity to set a more stringent standard.
6 Now, whereas under the compatibility realm, if it was
7 something that was in the national interest, is this
8 going to have extra territorial influences, is it
9 going to break down our national communications in
10 terms of public health and safety or what we perceived
11 as an acceptable level? Then we would clearly have to
12 do an extensive review and approve whether or not that
13 level is acceptable.

14 COMMISSIONER REMICK: Let me probably
15 contribute to confusion. I don't think the
16 incinerator is the best example because our
17 regulations don't -- we're not requiring people to
18 have incinerators or not. All our regulations do, if
19 they build one, there are regulations that address the
20 releases. So, if a state wanted to bar incinerators
21 in principle, I don't think our regulations even come
22 into effect. Where they come into effect, if a
23 state -- if in the state they're going to build an
24 incinerator, there are certain radiation standards.
25 I have great difficulty when I think of local

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1 government or state government setting standards
2 inconsistent with the national standards. I thought
3 the NRC was established for a purpose, and that is to
4 establish standards nationally. I have very, very
5 strong concerns about permitting anybody setting other
6 radiation emission or dose standards. I think it's
7 opening Pandora's box and you can't distinguish
8 between what is necessary for a local populace, what
9 is a local populace to accept something versus efforts
10 to discourage the practice. That's why I use those
11 words "discourage." It isn't only bar it, which in my
12 mind is more of a legal positive term that you just
13 can't do it, but you can sure do a lot of things to
14 discourage practices that might be in the best
15 interest of the total populace, even the total local
16 populace, if we had a way of determining it.

17 But I think we're opening ourselves up to
18 vocal minority groups of the public through political
19 means placing limits which are inconsistent with what
20 I thought was the responsibility of this Agency to do
21 and that is to set standards.

22 MR. TAYLOR: Commissioner, may I
23 interject?

24 COMMISSIONER REMICK: Yes, please.

25 MR. TAYLOR: The Commission is touching on

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1 something that gave rise to great worrying arguments
2 in my office and outside my office.

3 COMMISSIONER REMICK: Good.

4 MR. TAYLOR: Because -- yes, right. Now,
5 we are concerned about what you have said,
6 Commissioner. Yet the state input to this whole
7 discussion was that they wanted the ability to have
8 the door slightly ajar. I'm using some analogy to
9 this. It is for those very reasons and we set down
10 the conditions not to bar the basic practice of
11 whatever you're trying to do, that the basic standards
12 should be essentially identical to the NRC, and that
13 where they wanted for whatever local conditions, and
14 we tried to imagine all these and we could think up
15 hypothetical cases to propose more stringent
16 requirements, that that should be submitted.

17 What we see here will be the policy
18 developed by specific cases where the states come in
19 and make a case of some type and we look at that and
20 bring it to the Commission and advise them. I don't
21 expect these to come in at the rate of one a month or
22 anything like that.

23 COMMISSIONER de PLANQUE: But you're
24 saying they have to meet a safety and environmental
25 criteria.

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1 MR. TAYLOR: Right, but that they could
2 have a more stringent base for various reasons.

3 COMMISSIONER de PLANQUE: Health and
4 safety?

5 MR. TAYLOR: No. No.

6 MR. BANGART: Not for compatibility. Not
7 necessarily.

8 MR. TAYLOR: This is for compatibility
9 purposes. This is not --

10 COMMISSIONER REMICK: If somebody comes in
11 and says, "We need it for local acceptance," how do we
12 judge that? Who is the local populace that's being
13 referred to?

14 MR. TAYLOR: We'd hope that there was a
15 more substantive basis than just a --

16 COMMISSIONER REMICK: I appreciate the
17 fact coming into the NRC. But with respect to
18 everybody within the Agency, we are not completely
19 sensitive what might affect many of our licensees,
20 particularly in the materials area. They're so
21 diffuse and so many and I think we have a lot of
22 current examples where we don't have the sensitivity
23 to that group in what our regulations do, nor what
24 local regulations might do to licensees. When I say
25 our licensees, I mean agreement states as well as NRC.

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1 MR. TAYLOR: You mean local standards?

2 COMMISSIONER REMICK: Yes, that's right.

3 And our judging the impact, unless we go through an
4 adequate public comment period for those people to
5 address their concerns. But if we just take a request
6 coming in and we're to judge, in all sincerity I say
7 that we don't have the sensitivity many times to
8 understand the impact on the licensees who would be
9 affected because there are so many and they're so
10 diffuse.

11 CHAIRMAN SELIN: With all due respect,
12 this is clearly an issue on which the Commission is
13 not exactly 100 percent in agreement.

14 COMMISSIONER de PLANQUE: In sync.

15 CHAIRMAN SELIN: There are two quite
16 conflicting approaches. One is we feel in general the
17 reason it was in NRC is not just to have a national
18 inspection program, but to have some national
19 practices.

20 MR. TAYLOR: We agree.

21 CHAIRMAN SELIN: On the other hand, you
22 read the plain language of the law. It says that --
23 I mean the compatibility is almost like an
24 afterthought to give us some options so that we have
25 something a little more than adequacy. If you didn't

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1 have the compatibility thrown into the law, we would
2 have absolutely none of the authority that
3 Commissioner Remick is discussing. That doesn't say
4 equal to, it says adequate, protection effectively
5 greater than or equal to that which we require. Then
6 it gives us the crack in the door to say, but we can
7 also require compatibility in addition to adequacy,
8 although the implication is we have to define pretty
9 carefully what it means.

10 So, reading the law there and reading the
11 sense of what we think the NRC was set up, one could
12 see some inconsistencies between the two. So, you
13 guys have to really figure out what you think it means
14 and clearly define what you mean and don't try to read
15 the Commission on how we're going to come out on
16 something like this because it's a difficult set of
17 issues. I'm one Commissioner has some inconsistencies
18 even in my own mind, let alone from Commissioner to
19 Commissioner on this point.

20 MR. TAYLOR: It's much easier if we said
21 under no cases would we ever agree to a more stringent
22 criteria, but we felt and the state input -- was it
23 the state input?

24 COMMISSIONER de PLANQUE: I think this is
25 why we're --

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1 MR. TAYLOR: That was not really
2 cooperative in the sense that don't even submit
3 anything to us, don't even ask.

4 COMMISSIONER de PLANQUE: I think this is
5 why it's incredibly important for us to have examples
6 of what could logically fall into this bin. I think
7 at least Commissioner Remick and I are having a very
8 difficult time finding even a valid example that you
9 could rationally justify would fall into this bin.

10 The other comment I would make is that
11 when you look at the criteria for identical
12 requirements on page 14, two of them have to do with
13 communication, on radiation protection concepts and
14 terminology. If you consider communication as to what
15 is safe, you're into a criterion which I think applies
16 in this case. But as we said, we're not all on the
17 same --

18 CHAIRMAN SELIN: From my point, I see
19 nothing in the law that says that the states have to
20 convince us if they want to make something more rigid
21 than what we require that they have to get our
22 permission or that they have to do this on a health
23 and safety basis. I do see that there can only be one
24 set of standards if standards mean that health and
25 safety requires X. But there are other bases other

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1 than health and safety to require something more
2 rigorous than X. So, I guess I'm not completely in
3 accord with some of my colleagues on this issue. A
4 lot has to do with basis for which this is put in.

5 COMMISSIONER REMICK: A question for
6 understanding. Will there still be something called
7 division 1 and division 2, that type of thing? In
8 other words, would there be things that we would
9 identify that must be compatible, strictly compatible
10 or not?

11 MR. SCHWARTZ: They wouldn't use the same
12 framework because there would be regulations that
13 would be necessary for adequacy and programs that are
14 necessary for adequacy. The states would have the
15 flexibility to put those programs and regulations in
16 place. They did not have to be essentially identical,
17 but they have to have equivalent protection. In the
18 compatibility area, we would have what you would say
19 is a division 1 --

20 COMMISSIONER REMICK: Right.

21 MR. SCHWARTZ: -- which has to be
22 essentially identical along with some other
23 programmatic issues.

24 COMMISSIONER REMICK: Okay. But once
25 we've defined something called division 1, which we're

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1 saying that they have to be identical, isn't it
2 inconsistent to talk about then exceptions being made?
3 In other words, I'm assuming that the type of
4 things -- if they're in division 2, they don't have
5 to be identical. So, we must be talking just about
6 division 1, radiation protection standards,
7 definitions, those type of things, some of those,
8 maybe not all of them, that are currently in division
9 1. I can't think of the examples in what is
10 ultimately called a division 1 that there would be
11 exceptions.

12 CHAIRMAN SELIN: I think we all agree that
13 division 1 would be identical. You know, there's a
14 problem with language because division 1, division 2
15 should be called something like comparability, not
16 compatibility. We're using compatibility to mean two
17 quite different things. But putting that apart, I
18 think we all agree that compatibility requires
19 identical language. For those things that we require
20 compatibility, we require essentially identical
21 language. The thing that we're discussing is the
22 criteria under which we require division 1, so to
23 speak.

24 MR. SCHWARTZ: That's correct.

25 CHAIRMAN SELIN: That language. I

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1 probably would feel that unless there's a clear
2 argument on one of those four points on page 14, that
3 we don't have the basis for requiring something to be
4 division 1. Some of my colleagues might feel, no, if
5 there's a legitimate practice that's precluded by
6 those rules or there has to be further a health and
7 safety argument for somebody to require something more
8 stringent than we do, those would be different
9 criteria for where do we require strict compatibility.
10 I think we would all say that if it's an item of
11 strict compatibility, then it is. There are no
12 exceptions to that. But what are the criteria for
13 deciding something is such an item?

14 MR. SCHWARTZ: But, Mr. Chairman, if I
15 just may, I want to expand. I don't want to focus
16 just on division 1 because division 1 were only
17 regulations. What we're providing here --

18 CHAIRMAN SELIN: You're talking about
19 programs.

20 MR. SCHWARTZ: Right, through our programs
21 with the same division 1 definition.

22 CHAIRMAN SELIN: Sure.

23 MR. BANGART: It should be clear though
24 that even under this policy as we've drafted it up
25 here, a basic radiation protection standard like Part

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1 20 that applies to any and all licensees would not be
2 a candidate to have any part of that more strict.

3 CHAIRMAN SELIN: I would argue that if a
4 state doesn't adopt Part 20, they don't have an
5 adequate program, let alone compatible.

6 MR. SCHWARTZ: That's true.

7 COMMISSIONER REMICK: But we were talking
8 earlier about one millirem being acceptable. That's
9 not in Part 20. That's inconsistent with Part 20 in
10 my mind, radiation protection standard. You said that
11 would be acceptable.

12 MR. SCHWARTZ: 61.41 and 43.

13 COMMISSIONER REMICK: Yes, right.

14 COMMISSIONER de PLANQUE: They revert back
15 to 20.

16 MR. BANGART: 42 reverts back to 20.

17 COMMISSIONER REMICK: So, what you said,
18 Dick, I agree with, but the example we were just
19 discussing earlier was inconsistent with that, in my
20 mind.

21 COMMISSIONER de PLANQUE: Right.

22 COMMISSIONER ROGERS: Well, that really
23 brings back to my question which I asked at the very
24 beginning because I anticipated that we would be into
25 examples that came from low-level waste because that's

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1 really where the problems seem to be coming from. So
2 far, I haven't heard anybody say, "This applies to
3 low-level waste or doesn't apply to low-level waste
4 because." In my reading of it, I read it rather
5 carefully with a point of view of whether it could
6 apply to low-level waste. Frankly, with the exception
7 of the part that we've just been talking about here,
8 I thought it probably could, but I haven't heard
9 anybody say that.

10 So, I'd like to hear what your views are
11 on the extent to which this policy statement, in fact,
12 is intended to apply to low-level waste or could apply
13 to low-level waste. So, I'd like to hear that. I'd
14 also like to go back to slide 14 sometime because I'm
15 quite concerned about what the thinking is with
16 respect to this question of identical requirements.
17 But can you give me a statement on to what extent what
18 we have in this policy statement can be taken right
19 over for low-level waste programs?

20 MR. SCHWARTZ: Commissioner Rogers, thank
21 you very much. In the Commission paper we had the
22 final line said the staff believes that the draft
23 policy should also be applicable to the area of low-
24 level waste disposal and also believes that the draft
25 policy is consistent with the Commission's previous

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1 actions regarding compatibility in the area of low-
2 level waste. So, we believe yes, it is.

3 COMMISSIONER ROGERS: Okay. So, I think
4 it's fair game then these examples that are coming up
5 because they are low-level waste and that's where
6 we've really run into the problem in the past. So, it
7 is your intention to use this for low-level waste and
8 so we should be thinking about it from that point of
9 view as well.

10 MR. SCHWARTZ: And I guess the working
11 group and the staff discussed it. It just didn't
12 seem -- the carving out just didn't seem right when
13 you looked at the total compatibility policy.

14 COMMISSIONER ROGERS: Well, I personally
15 don't have a problem with that. I'd like to see one
16 policy that covers programs and not two policies.

17 MR. SCHWARTZ: That's correct. That's
18 correct.

19 COMMISSIONER ROGERS: One for low-level
20 waste and one for something else.

21 CHAIRMAN SELIN: I do have to say that if
22 the Commission voted to set a very tough standard for
23 when a statement could require a more rigorous program
24 than we require, then I would have a lot of problems
25 applying that to low-level waste program because the

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1 justification -- I mean the statutory basis for low-
2 level waste is different and puts more authority in
3 the states. So, I agree with the going in position.
4 It would be nice to have a position that covered all
5 of them, but it depends on how we come out. If we
6 come out with a more uniform approach rather than a
7 more flexible approach, then we would have the further
8 question of can we apply that same approach to low-
9 level waste given the difference in statutory basis.

10 But I guess I am bothered by Mr. Bangart's
11 statement that says you have to accept -- you know,
12 take Part 20 or Part 35 intact. I still don't see why
13 a state couldn't set the higher level as long as they
14 don't argue that health and safety requires it, that
15 some radiation safety requires it. You take all the
16 same language, but say in our state we expect more
17 rigorous performance than the federal.

18 MR. TAYLOR: Yes. If you did that in the
19 ALARA sense, that's completely consistent with the
20 whole field of radiation protection. In an operation
21 of any facility where they can achieve much lower dose
22 than just by reasonable protection, that's the whole
23 concept behind ALARA, that they don't reach the
24 limits. So, the public standing next to the wall, you
25 could -- if they stood there all the time, you could

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1 be 50 MR rather than 100. If it's just as easy to do
2 that, that's sort of an ALARA approach.

3 So, I agree with you, Mr. Chairman, that
4 the standards themselves are limits normally and --

5 Do you agree, Dick?

6 MR. BANGART: Yes. My comment was not
7 meant to extend to like Part 35. That would be, at
8 least in the context of this paper, a particular
9 practice. That would be medical licensees. So, in
10 this case, if that were a local condition, there were
11 local conditions and it applied only to one class,
12 then this policy would allow it. But still, a general
13 radiation protection standard in Part 20 that was
14 meant to apply to any and all uses, 100 millirem limit
15 for members of the public, that would be something in
16 accordance with this draft that we would not allow a
17 more strict requirement to be put in place.

18 COMMISSIONER REMICK: I would hope not.

19 MR. TAYLOR: In practice they could come
20 in much lower by ALARA.

21 MR. BANGART: By ALARA they could.

22 COMMISSIONER REMICK: As long as those
23 ALARA were goals and not --

24 MR. TAYLOR: Right.

25 COMMISSIONER REMICK: -- programs and not

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1 requirements.

2 COMMISSIONER ROGERS: I think some of us
3 really felt that the word "standard" really had to
4 mean something. It really has to mean something.
5 It's not just a requirement, it's a standard. A
6 standard is something that hopefully could be
7 international and certainly national.

8 But I'd like to come back to this criteria
9 for identical requirements question. It seems to me
10 that I had a great deal of trouble understanding what
11 that part of the policy statement was really talking
12 about in the sense that there's a policy statement
13 here, but it seems to me that the section that deals
14 with this criteria for identical requirements or
15 whatever it's called in the paper itself, in the
16 compatibility area, really is a statement of work to
17 be done. This hasn't been done yet. What you're
18 going to do, as far as I understand it, is look at our
19 regulations, policies and procedures -- ours, not
20 somebody else's, ours -- from the standpoint of these
21 criteria and see to what extent any of them are
22 necessary to avoid these untoward consequences here.
23 And then once we've done that, we'll have a list of
24 things and that list of things then will have to be
25 identically incorporated by every state into its

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1 regulations.

2 MR. SCHWARTZ: That's correct,
3 Commissioner. That's correct.

4 COMMISSIONER ROGERS: So, we're not
5 talking about some criteria that we will use to look
6 at somebody else's regulations right here. We're
7 talking about criteria that we're going to apply to
8 look at our own regulations.

9 MR. SCHWARTZ: Our own regulations and
10 programs.

11 COMMISSIONER ROGERS: Programs, policies
12 and whatever. There's four elements there.

13 MR. SCHWARTZ: Correct.

14 COMMISSIONER ROGERS: I think elements.

15 MR. SCHWARTZ: Correct, elements.

16 COMMISSIONER ROGERS: So, all those
17 things, whatever they are --

18 MR. SCHWARTZ: Correct.

19 COMMISSIONER ROGERS: -- are going to be
20 held up to these criteria --

21 MR. SCHWARTZ: Correct.

22 COMMISSIONER ROGERS: -- and to see what
23 sticks, what has to, what's necessary to avoid these
24 unfortunate consequences. That is work that has yet
25 to be done.

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1 MR. SCHWARTZ: That's correct,
2 Commissioner.

3 COMMISSIONER ROGERS: So that nobody
4 really knows how that's going to come out. I mean
5 these are the criteria that are going to be applied,
6 but right now we don't know what's going to fall out
7 of that screen once you dump everything into it and
8 shake.

9 So, I think that there are some big
10 questions of what those results are going to look
11 like.

12 CHAIRMAN SELIN: But page 16 gives you a
13 pretty good idea.

14 MR. SCHWARTZ: Page 16 is we attempted
15 to -- certainly not exhaustively but we tried to
16 frame --

17 COMMISSIONER ROGERS: Oh, yes. No, I mean
18 these are just words. These are titles. These aren't
19 policies. These aren't practices. These aren't
20 regulations, these are titles and I'm talking about
21 the actual specifics that are going to shake out of
22 that. That's going to be -- I have no idea what it's
23 going to look like because I suspect that once you
24 apply those criteria as a screen and you shake things
25 through, you'll find some pieces sticking in there

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1 that are disjointed. By themselves they can't be
2 used. You can't say, "Well, you've just got to adopt
3 this particular phrase or something that didn't go
4 past through the screen," and then there's going to be
5 something added at that point to make it fit in some
6 way. So, it seems to me that the process to me is a
7 little bit unclear as to how that's all going to come
8 out.

9 I mean these are all fine words, but I
10 certainly don't see the list on 16 as telling me
11 anything very much except the kind of area that you're
12 going to expect to be looking at. But we're talking
13 about -- this paper says that you're really talking
14 about details. You're talking about great detail in
15 the compatibility area.

16 As you've said yourself, Mr. Schwartz,
17 that there are elements, regulations, policies and
18 procedures. Boy, that's a very wide swath of entities
19 there that are going to be looked at from the
20 standpoint of these criteria. If they don't pass the
21 test of not giving rise to problems, they will have to
22 be identically or essentially identically replicated
23 in the state program.

24 MR. SCHWARTZ: Commissioner Rogers, I
25 can't agree with you more. Normally the devil's in

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1 the details and I agree with you there. Our attempt
2 was to try and draw a bright line as best we could as
3 to what is different about compatibility as different
4 from public health and safety or the adequacy
5 component. There is a lot of work to be done and I'll
6 be the first to agree to that. If the Commission
7 believes that this is the appropriate track to go on,
8 then the staff could take the next step and then
9 develop a little more detail to flesh out exactly the
10 procedures of the programmatic elements that's
11 necessary to be more explicit as to exactly what each
12 element program, regulation is involved and what it is
13 that we mean by the essentially identical areas.

14 COMMISSIONER ROGERS: Well, what would be
15 the advantage of publishing the rule without having
16 done that? Wouldn't it be well to wait until you've
17 tried to do that before you published the -- the
18 policy statement, excuse me.

19 MR. SCHWARTZ: I think it's a policy issue
20 at this point. An example might -- this is my
21 judgment. As a policy matter that there may be -- I
22 think there are sufficient words in here that
23 describes what the concept is with some examples of
24 that concept and that getting more input from the
25 public, from the agreement states would enhance the

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1 areas when we go through the individual programmatic
2 elements in the NRC program that would be candidates
3 for being essentially identical to the NRC program.

4 COMMISSIONER de PLANQUE: I think the
5 problem may be that the straw man for the adequacy
6 part is a little more formed than the straw man for
7 the compatibility and that may be what you're
8 suggesting.

9 COMMISSIONER ROGERS: Oh, yes, true.

10 MR. BANGART: If I might add, we're
11 working in parallel with common performance indicators
12 initiative as well, as you know, and the incomplete
13 compatibility element of that is what we're talking
14 about. The current thinking is that we would probably
15 have to proceed with team approach using common
16 performance indicators and that the compatibility
17 determination for an agreement state program during
18 this transition period would at least initially have
19 to use the existing approach where we'd just look at
20 regulations and then use the old B-7 procedure. As
21 these details work themselves out and we came up with
22 this screening and sorted out the adequacy piece
23 versus the compatibility piece, then in the latter
24 stages of that transition period we'd be using perhaps
25 draft procedures that would implement this broader

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1 policy that we would be moving forward with after your
2 approval.

3 So, it is going to be a difficult next six
4 months or so before all the procedural details get
5 ironed out.z

6 COMMISSIONER ROGERS: I'd like to ask just
7 a little nitty gritty question because I said
8 something that might have been wrong and I think you
9 said yes and maybe you didn't mean to say yes. But in
10 the enclosure the compatibility agreement statement
11 program means -- I won't read all the words, but it
12 does say that it is a program containing elements,
13 regulations, policies and procedures considered
14 necessary to be compatible. Then the next paragraph
15 says, "The following criteria shall be applied to
16 program elements and regulations to determine whether
17 they need to be adopted by agreement states."

18 Now, those are only two things, program
19 elements and regulations. Did you mean the full list?

20 MR. SCHWARTZ: I meant the full list.

21 COMMISSIONER ROGERS: You meant the full
22 list? That was just shorthand for the full list.
23 Okay.

24 MR. SCHWARTZ: Commissioner Rogers, in
25 answer to your point on page 16, I agree with you,

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1 these are -- this is only a list and in the Commission
2 paper, although in shorthand also, we did attempt to
3 provide at least a little more meat to those bones.
4 But I do recognize that in order to get more
5 specificity as to what this policy proposes, that it
6 may be useful to go back. But that's the Commission's
7 judgment.

8 MR. SCHWARTZ: (Slide) I'd like to move
9 on, if I may, to viewgraph 17.

10 As I mentioned earlier and as Dick
11 mentioned, we've attempted to conform the integrated
12 materials performance indicator program, performance
13 evaluation program and the compatibility policy as the
14 two wound its way down through the staff and up to the
15 Commission. That development of common performance
16 indicators are closely coordinated with the efforts to
17 define the elements of an adequate state program and
18 the common indicators will be used along with non-
19 common indicators to evaluate the adequacy of an
20 agreement state program. The proposed common
21 indicator program contemplates the use of a management
22 review board to make the decision on the adequacy and
23 compatibility for agreement states and that
24 compatibility indicators will be developed for use by
25 the review team.

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1 COMMISSIONER de PLANQUE: Shelley, how
2 will the agreement states have input into that?

3 MR. SCHWARTZ: We would propose -- well,
4 first we'd have the workshop on -- you mean on the
5 impact program?

6 COMMISSIONER de PLANQUE: The last bullet,
7 the compatibility indicators.

8 MR. SCHWARTZ: We would provide that to
9 them and get comments back from them when the staff
10 works on it.

11 COMMISSIONER de PLANQUE: Will they have
12 any up front input?

13 MR. SCHWARTZ: I expect they will, yes.
14 We would provide them the information that we have
15 right now. We have already had a workshop with the
16 agreement states on the impact program as part of the
17 Tempe meeting and we have a lot of input already from
18 the agreement states on that. They are now waiting
19 for the next go through and we will have another
20 discussion with them on that. So, we've had at least
21 one or two opportunities to discuss the impact program
22 with the agreement states.

23 MR. BANGART: We do not have established
24 a formal plan yet with milestones. We've yet to do
25 that.

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1 COMMISSIONER de PLANQUE: Okay.

2 MR. SCHWARTZ: (Slide) Viewgraph 18.

3 Future actions. If the Commission
4 approves publication, we will publish the draft policy
5 statement in the Federal Register for 90 days. I will
6 note that we are planning to conduct a public meeting
7 on February 22nd and 23rd with the agreement states
8 and the regulated community, environmental community,
9 the same cross section that we had at the July
10 workshop as well, to discuss the proposed policy and
11 that we're now drafting the agenda for that. If there
12 are any issues that the Commission would like to see
13 on that agenda, I'd sure like to get that in as soon
14 as we can.

15 Then the final act on this issue would be
16 to prepare a Commission paper transmitting the final
17 proposed policy statement to the Commission. That
18 would include what we heard at the workshop and also
19 include any comments we got as a result of the Federal
20 Register notice.

21 That concludes the presentation.

22 CHAIRMAN SELIN: I have a couple of
23 observations. First, some minor ones. One is that we
24 have to be very careful. The agreement states are
25 most affected by this. We need to pay a lot of

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1 attention to what they say, but they shouldn't get a
2 chance to read the documents before everybody else.
3 I mean the workshop is the right approach. There are
4 many people that are affected in addition the
5 agreement states and they should all be seeing the
6 material and they should all get a chance to comment
7 on this.

8 More generally, I really think you've done
9 a superb job in breaking out the distinction between
10 an adequate program and a compatible program. As I've
11 said before, my view is that the agreement states
12 program is different from a lot of other things that
13 we run, that the law sets it up differently and it is
14 different. We don't delegate to them, they run a
15 program and we're supposed to evaluate their programs
16 against these two rather vague -- well, adequacy is
17 not so vague, but compatibility is fairly vague, as
18 opposed to saying, are they carrying out our program
19 the way we would like them to carry it out? At least
20 in my case, that affects very much the way I look at
21 what we require them to do and what they come back and
22 do.

23 It is also possible that a program could
24 be compatible but not adequate, which is not the way
25 we've looked at things in the past. In the past, we

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1 treated compatibility as something like adequacy, but
2 more so, so that adequacy was included. In other
3 words, if a program was not adequate, we treated it as
4 if it couldn't be compatible. But the way you've set
5 this up, which I happen to think is correct, where
6 they're on different dimensions, each of those two
7 evaluations has to be done separately.

8 The fourth comment is that a number of
9 things that we've thought of as being compatibility
10 issues because of the confusion of division 1 and
11 division 2 is compatibility really are adequacy issues
12 and we need to get a very clear idea of what we
13 require for a program to be considered adequate. When
14 you talk about radiation standards, et cetera, those
15 standards have to be part of the adequacy program.

16 I do think that your page 16 gives a very
17 clear idea of the kind of things that have to be
18 tested for a compatibility program and more precisely
19 say our view of compatibility requires a uniform
20 manifest and transportation criteria, et cetera,
21 things that would not be required just on straight
22 adequacy because if there were only one agreement
23 state, they wouldn't come up.

24 So, I'm not particularly alarmed by the
25 fact that we're being asked to approve the policy

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1 statement before we see what its full implementation
2 would carry out, but this carrying out this concept
3 one step further, what do we really require for
4 adequacy, I think that has to be done very carefully.

5 I think you've done a very good job. I
6 think it's been quite a different job, quite a
7 groundbreaking job and we'd really have to take a good
8 hard look as to what we mean by an agreement
9 statement, whether on the one hand they're just people
10 who carry out our program, in which case they're
11 argue, "Why should we bother being an agreement
12 state." On the other hand, do we really give them
13 full license to run where they are with just a very
14 simple test and I don't think anybody is in favor of
15 that. So, the concept of what's an agreement state is
16 an underlying question below this policy statement.

17 Commissioner Rogers?

18 COMMISSIONER ROGERS: Yes. I think that
19 you're drawing the distinction between adequacy and
20 compatibility. The way you've done it, I think, is a
21 very important step forward. It does carry with it
22 some questions. For example, do you think that when
23 we're finished with this that it will be possible to
24 maintain requirements that are not weighty enough to
25 lead to a finding of inadequacy or incompatibility,

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1 but nevertheless are kind of practices that somehow or
2 other we've very strongly favored in the past?

3 I can't think of a particular example
4 right off the top of my head, but it seems to me that
5 going the route that we're going now, which I think is
6 the right way to go, does carry with it the
7 possibility that when we're finished we'll have a set
8 of criteria that somehow will leave out some of the
9 things that we think have been very good things for us
10 to insist on on the past, even though they don't fall
11 into this new framework.

12 I know just on the basis of the discussion
13 that we had this morning about the Commissioners'
14 views on what should be in regulations and what should
15 not be in regulations will have to be brought to bear
16 on that. But I just wondered if you have thought
17 about that aspect of going this way.

18 MR. SCHWARTZ: The notion of this program,
19 adequacy and compatibility being reviewed as part of
20 the common performance indicator program, along with
21 some of the special or uncommon indicators, we'll say,
22 I think is what puts the thinking hat on and not just
23 an operation where we're just counting numbers and
24 that we will find some areas that are in the gray
25 zone. I'm sure we will. That's where I believe that

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1 the management review board will -- the senior
2 managers of the Agency will then apply their judgment
3 as to the significance of some of those gray areas and
4 then be able to recommend to the Commission what we do
5 about it, whether we enjoin the governor in a
6 discussion on why the state is not compatible or other
7 sanctions or other actions that the Commission might
8 want to take with respect to a finding of not
9 compatibility.

10 I think it's clear in the area of adequacy
11 that we would -- I think we'd be very strong and have
12 a very rigid approach to those questions.

13 COMMISSIONER ROGERS: With respect to
14 areas for discussion at the workshop, I notice that
15 really there's nothing in the SECY yet other than a
16 brief mention of how to deal with shortcomings in
17 programs. There is in Part -- well, page 10, I guess
18 it is, of the SECY in Section 6, "The procedures will
19 also establish the process for suspending an agreement
20 statement program, placing it on probation and
21 reasserting NRC jurisdiction."

22 Now, I take it that those are seen as
23 three separate and distinct issues there, a suspension
24 status, a probation status and then a reassertion of
25 NRC's jurisdiction. Or do you just see that as really

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1 one category?

2 MR. SCHWARTZ: I would see that as one
3 category with various elements on what the Commission
4 could do with respect to a program that is either not
5 adequate or not compatible. Those procedures are
6 being worked on under the programmatic assessment
7 group that was created after the SRM that said, "We
8 look at the agreement state program, rebaseline, look
9 at the policies." So, that is an issue that's being
10 handled under that programmatic assessment group which
11 is being chaired by Dick Bangart.

12 COMMISSIONER ROGERS: Well, I would think
13 the workshop would be a place that would explore what
14 kind of sanctions are meaningful here when a state
15 falls short for some reason. It does seem to me that
16 we need some kind of a graded approach. I think one
17 of the difficulties that we had in explaining what we
18 did or what we didn't do a year or so ago had to do
19 with this go/no-go situation that we're in. We either
20 find it compatibility or you have to take it back.
21 We've been trying to find some intermediate group to
22 give a little bit of time for things to happen both on
23 our end and on the licensee's or the agreement state's
24 part. I think that's an area that I personally would
25 like to see some considerable work done.

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1 MR. TAYLOR: We agree.

2 MR. SCHWARTZ: We agree with that.

3 COMMISSIONER ROGERS: Well, thank you very
4 much.

5 MR. SCHWARTZ: Thank you, sir.

6 COMMISSIONER REMICK: I'd also first like
7 to say I think you've made some contributions
8 conceptually to this whole process of what do we mean
9 by adequacy and compatibility. There's no question
10 about that should be given thought. Where I start to
11 have some real stronger than concerns, point of
12 objections is when I see things like on page 3 that
13 people can set stricter dose limits when local
14 conditions warrant. Now, dose limits to me, as I
15 think of them in Part 20, are standards. I hear you
16 at least part-time saying that things like radiation
17 protection standards is defined in Part 20, presumably
18 would remain in division 1. Let me call it division
19 1. I certainly agree that there are certain things
20 like that.

21 Now, something interesting came to mind
22 when the Chairman mentioned that those standards
23 probably should be in the adequacy provision. My
24 first reaction is no, that's inconsistent with
25 conceptually what you've just defined. But I think

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1 perhaps he's right. I think things like radiation
2 protection standard might be both necessary for
3 adequacy and for compatibility. I don't want us to
4 get back to where we were before where they were
5 confused, but it caused me to think that maybe there
6 are a few things that are necessary in both areas.

7 I'm convinced -- and by the way, I'm very
8 much for flexibility, where we can offer flexibility,
9 but I think we do have a responsibility to establish
10 standards. So, I very strongly feel that there will
11 be something, whether we call it division 1 or not,
12 that are going to be necessary to be identical. Then
13 I can't see where we can have exemptions where people,
14 for local needs, can vary those, or the fact that
15 their division 1 has no meaning. To me, things that
16 people have the flexibility to change automatically
17 fall into division 2 because if I look at the
18 definition of former division 2, it says, "Well,
19 states much address such principles," meaning 1 and
20 division 2. "In their regulations, the states may
21 adopt requirements more restrictive than NRC rules."

22 So, to me, the type of things we're
23 talking about automatically are not in division 1,
24 they're in division 2. They're not even subject to
25 discussion. We've already said they can have more

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1 restrictive, but there will be some things in my mind
2 that are going to be division 1 where we cannot offer
3 that type of flexibility.

4 So, that's the inconsistency that I see in
5 the paper. It's in that area of providing the local
6 option, local conditions to dictate. I have great
7 concerns over that and where you draw the line. Even
8 if it comes back to us for review, whether we can do
9 the adequate job of being sensitive to the people who
10 would be affected by those.

11 I do have concerns. I certainly don't
12 want to hold the process up, but I agree too that
13 these elements in the compatibility I think are not
14 as well addressed as the one on the adequacy. If we
15 went out with what is here now, I'm not sure we would
16 get the comments that are going to be helpful. I
17 think you'll see the type of confusion that obviously
18 exists in some of our minds of what are the meaning of
19 these words and so forth. So, I don't know what the
20 best solution of that is.

21 Having had some relationship with the
22 radiation protection community and some familiarity
23 with ICRP, I thought I understood practice. But I
24 must admit when the question came up is an incinerator
25 a practice or not is a good question. So, I think you

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1 do need to define what we do mean by practice,
2 although it's a common term in the radiation
3 protection community and ICRP, et cetera.

4 I had mentioned that I thought this bit
5 that you should add to your list of four, that people
6 should not be able to impose local requirements that
7 would discourage certain practices, and I said I
8 thought discourage was better than bar or preclude.
9 But on second thought I'm not sure because discourage
10 is awfully hard to define and know when is it
11 discouraging. Maybe the word "effectively bar or
12 preclude," might be helpful to your word "bar,"
13 because I can see that's the opposite extreme. Unless
14 they say, "You shall not," somebody can say, "Well,
15 we're not barring it." So, maybe "effectively" might
16 help. I don't know.

17 MR. SCHWARTZ: Trying to find intent.

18 COMMISSIONER REMICK: Yes, that's right.

19 But I think that pretty well covers my
20 comments. I think you've come a long way
21 conceptually. I do think there's still some confusion
22 in the compatibility area that should be addressed and
23 my inclination at the moment is to think personally
24 that perhaps some of that should be refined and better
25 defined before we go out for public comment. But

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1 that's just my view at the moment.

2 CHAIRMAN SELIN: Commissioner de Planque?

3 COMMISSIONER de PLANQUE: Well, I too
4 basically applaud the approach. I like the idea that
5 you've worked on program in terms of adequate and
6 compatible rather than looking at regulations per se
7 or the other subdivision. So, I basically like the
8 approach. I think I saw some little warning flags
9 that I was concerned with when you look at all the
10 items, let's say, on slide 10. When you get into
11 staffing and personnel and maybe budget, as someone
12 indicated in the paper, because then in my mind you're
13 moving a little away from the performance aspect of it
14 and into the prescriptive. I'm not sure that that's
15 the right way to go. So, I think there needs to be a
16 balance there that we don't move in the wrong
17 direction.

18 I also think, as was alluded to earlier,
19 that we have to keep in mind the end point as we go
20 through all of this. The end point being is how do we
21 determine when there's a case where we have to
22 withhold adequacy or have to withhold compatibility
23 and how do we do it and are these measures that we're
24 setting up going to work well for us when it comes to
25 that point of making those determinations?

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1 In terms of the workshop, several items
2 already came up. An awful lot needs to be fleshed out
3 more, especially in the compatibility area. In the
4 practice area, what does the practice mean? The low-
5 level waste example, I think, is a very good one that
6 we discussed. Is low-level waste a practice or is a
7 type of burial the practice? How do you define that?
8 I think that's going to be pretty critical. Perhaps
9 at the workshop is the place to discuss example of
10 what the local conditions would be that would require
11 something more stringent. I still find it hard to
12 think of an example that would come into that area,
13 which brings me again to the notion of radiation
14 protection standards.

15 As Mr. Taylor pointed out, you have ways
16 of operating at lower than the radiation protection
17 standards through programs that we already had, like
18 ALARA, maybe some release levels that trigger some
19 action. In my mind, if the radiation protection
20 standards are not adequate, then it's the standards
21 that should be changed. That leads you into an
22 entirely different direction.

23 Along those same lines, I would not like
24 to see radiation protection standards used as the
25 mechanism to make either economic or political

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1 decisions. Those are different decisions and
2 shouldn't be hidden behind a radiation protection
3 argument.

4 But basically I think you've done a very
5 good job and I like the basic approach and I await the
6 details.

7 MR. TAYLOR: When we talked about the more
8 stringent requirements, we sort of stuck with classes
9 of licensees. The staff on page 12 of the enclosure
10 makes the distinction that were that to occur, and
11 granted we don't have too many good examples, that it
12 could be for particular licensees, meaning just a
13 single operation or classes. So, I just would like --

14 COMMISSIONER de PLANQUE: Okay. Which is
15 different from this lot.

16 MR. TAYLOR: You may be able to make a
17 case for a particular licensee perhaps far better than
18 you could make a case for more stringent requirements.

19 COMMISSIONER de PLANQUE: Again, I think
20 if there were some compelling examples that could be
21 given, it would make the discussion a lot easier.

22 MR. TAYLOR: Certainly since this was a
23 state concern, perhaps they can help when we do engage
24 in discussions with good, concrete examples.

25 CHAIRMAN SELIN: I think there are two

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1 very separate issues. One is whether the state -- I
2 think the Commission is unanimous that we will not
3 tolerate the state setting different standards from
4 the national standards. But if they have an
5 inspection program that says, "In our opinion, if you
6 don't meet your ALARA goals, you have to close down,"
7 as opposed to something more generous that we would
8 do, that's the kind of thing that we're talking about.

9 But more specifically, the staff is
10 specifically asking for permission to publish this
11 document for comment at this point, isn't that right?

12 MR. SCHWARTZ: That's correct, sir.

13 CHAIRMAN SELIN: Okay. So, we have an
14 action on the table. I would suggest, and I think the
15 Commissioners probably support this, that at least a
16 few of these terms be defined before you really ask
17 for that permission, particularly practice elements,
18 a couple of those pieces. Take a look at that, take
19 a look at the shorthand, Mr. Schwartz, and see if you
20 want to expand that. Then you can decide whether you
21 want us to vote on this as it stands or do you want to
22 work out a couple of examples. If I knew what some of
23 these words meant, I would be prepared to vote. So,
24 my colleagues might want to see some examples carried
25 out.

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1 But there is a proposition on the table.
2 We've all asked what do you mean by practice. We've
3 all asked how would you come out in three or four
4 situations? We're not clear what the answers are. It
5 would probably be worthwhile to answer those, at least
6 those questions that were generally set up before you
7 ask us to vote on that.

8 MR. SCHWARTZ: Yes, we will do that.

9 CHAIRMAN SELIN: And the rest we'll just
10 see. We may have different views as to whether this
11 is ready to go out for comments or would we want more
12 Commission insight.

13 MR. TAYLOR: We may have to delay the
14 workshop or reschedule it based upon providing
15 additional information, but we'll take a look at it.

16 MR. SCHWARTZ: We'll take a look at it and
17 we can provide --

18 CHAIRMAN SELIN: As far as the workshop
19 goes, I will identify myself with Commissioner Rogers'
20 comment, I think Commissioner de Planque and I suspect
21 Commissioner Remick did also, that we don't want to
22 just see here's a definition of what's compatible and
23 what's adequate, but have a discussion of how people
24 would see the Commission acting in certain
25 circumstances where the program was found to be

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1 adequate but not compatible. It was compatible on one
2 set of compatibilities, but not others. At least this
3 discussion of a range of actions to take once you're
4 having that workshop. I think we would probably all
5 like to see those. So what, what would we do with
6 this information if we had it discussed at the same
7 point?

8 Okay. Very good job. It was obviously
9 very stimulating and really quite well done. Thank
10 you very much.

11 MR. TAYLOR: Thank you. Appreciate it.

12 (Whereupon, at 3:30 p.m., the above-
13 entitled matter was concluded.)

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TITLE OF MEETING: BRIEFING ON OPTIONS FOR AGREEMENT STATE
COMPATIBILITY POLICY
PLACE OF MEETING: ROCKVILLE, MARYLAND
DATE OF MEETING: JANUARY 24, 1994

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*United States
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**BRIEFING ON DRAFT POLICY STATEMENT
FOR
AGREEMENT STATE ADEQUACY AND
COMPATIBILITY**

**Sheldon A. Schwartz, Deputy Director
Office of State Programs**

JANUARY 24, 1994



*United States
Nuclear Regulatory Commission*

OUTLINE

- ✓ BACKGROUND***
- ✓ PRINCIPLES OF THE AGREEMENT STATE PROGRAM***
- ✓ RESULTS OF DISCUSSIONS WITH VARIOUS GROUPS***
- ✓ RELATIONSHIP BETWEEN ADEQUACY AND
COMPATIBILITY***
- ✓ FUTURE ACTIONS***



***United States
Nuclear Regulatory Commission***

BACKGROUND

- ✓ ***Past Agreement State Compatibility Concerns***
- ✓ ***Commission Directed Policy Development***
- ✓ ***Establishment of Compatibility Working Group***
- ✓ ***May 20, 1993 Public Meeting***
- ✓ ***July 26-27, 1993 Public Workshop***
- ✓ ***August 30, 1993 Commission Briefing***
- ✓ ***October 24-27, 1993 All Agreement States Meeting***



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PRINCIPLES OF THE AGREEMENT STATE PROGRAM

- ✓ ***Recognize the Interests of States***
- ✓ ***Recognize the need for cooperation between the Commission and the States***
- ✓ ***Promote an orderly regulatory pattern between the Commission and the States***
- ✓ ***Provide for coordination of the development of radiation standards and other policies***
- ✓ ***Two separate Requirements -- Adequacy and Compatibility***



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RESULTS OF DISCUSSIONS WITH VARIOUS GROUPS

✓ States

- ▶ ***Minimum number of requirements for compatibility***
- ▶ ***Uniformity for interstate commerce***
- ▶ ***Uniformity of radiation standards***
- ▶ ***Early and substantive involvement***

✓ Regulated Community

- ▶ ***Strict adherence to uniform national radiation standards***

✓ Environmental Community

- ▶ ***Flexibility to adopt more stringent requirements***



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RELATIONSHIP BETWEEN ADEQUACY AND COMPATIBILITY

- ✓ ***Adequacy component provides for an acceptable level of protection for public health and safety in an Agreement State.***

- ✓ ***Compatibility component provides for the overall national interest in radiation protection.***



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ADEQUACY COMPONENT

- ✓ ***Requires that the level of protection of public health and safety be equivalent to, or greater than, that provided by the NRC.***

- ✓ ***Would not require that NRC requirements be implemented essentially verbatim or through a particular mechanism such as a regulation, unless one of the compatibility criteria for identical adoption needed to be met***



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ADEQUATE MEANS:

***An acceptable level of protection of the public
health and safety from the radiation hazards
associated with the use of byproduct, source, and
special nuclear materials.***



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AN ADEQUATE AGREEMENT STATE PROGRAM MEANS:

An effectively implemented regulatory program containing elements, regulations, policies, and procedures considered necessary by the Commission to provide an acceptable level of protection for the public health and safety from the radiation hazards associated with the use of byproduct, source, and special nuclear materials.



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EXAMPLE ELEMENTS OF AN ADEQUATE PROGRAM

- ▶ ***Protection***
- ▶ ***Regulations***
- ▶ ***Inspection Program***
- ▶ ***Enforcement Program***
- ▶ ***Staffing and Personnel Qualifications***
- ▶ ***Statutes***
- ▶ ***Laboratory Support***
- ▶ ***Licensing Program***
- ▶ ***Investigations
(Response to Events)***



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COMPATIBILITY COMPONENT

- ✓ ***Focuses on State action or inaction that would have extraterritorial impacts either on other States or on the effectiveness of the national program.***
- ✓ ***Requires the essentially identical adoption of certain elements of NRC regulatory program***



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COMPATIBLE MEANS:

The consistency between NRC and Agreement State regulatory programs which is needed in order to establish a national radiation protection program for the regulation of byproduct, source and special nuclear material which assures an orderly and effective regulatory pattern in the administration of this national program. Compatibility shall be aimed at ensuring that the flow of interstate commerce is not impeded, that effective communication in the radiation protection field is maintained, that central radiation protection concepts applicable to all licensees are maintained, and that information needed for the study of trends in radiation protection and other national program needs are ascertained.



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A COMPATIBLE AGREEMENT STATE PROGRAM MEANS:

A regulatory program containing elements, regulations, policies, and procedures considered necessary by the Commission to effectively implement the term "compatible" as defined above.



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CRITERIA FOR IDENTICAL REQUIREMENTS

- ✓ ***Avoid a significant burden on interstate commerce***
- ✓ ***Ensure clear communication on fundamental radiation protection terminology***
- ✓ ***Ensure clear communication and common understanding as to certain central radiation protection concepts applicable to all licensees***
- ✓ ***Assist the NRC in evaluating the effectiveness of the overall national program for radiation protection***



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POLICY UNIFORMITY-FLEXIBILITY BALANCE

- ✓ ***If none of the criteria for identical requirements for compatibility is met, the State would have the flexibility to design its programs to meet local needs and conditions, as long as the program is adequate.***

- ✓ ***To meet local needs and conditions, States could for particular classes of licensees adopt more stringent radiation protection requirements:***
 - ▶ ***Basic dose standards for all licensees essentially identical to NRC.***
 - ▶ ***Does not bar practice.***
 - ▶ ***States submit proposed more stringent requirements to NRC for Commission review and approval.***



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EXAMPLE ELEMENTS OF A COMPATIBLE PROGRAM

- ▶ ***Radiation Labels,
Signs, and Symbols***
- ▶ ***Uniform Manifest***
- ▶ ***Transportation Regulations***
- ▶ ***Event Reporting***
- ▶ ***Reciprocity***
- ▶ ***Records and Reports***
- ▶ ***Radiation Protection
Terminology***
- ▶ ***Radiation Protection
Standards***



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***RELATIONSHIP TO DEVELOPMENT OF
COMMON PERFORMANCE INDICATORS PROGRAM:***

- ✓ ***The development of the common performance indicators closely coordinated with efforts to define the elements of an adequate State program***
- ✓ ***The common indicators will be used along with non-common indicators to evaluate the adequacy of an Agreement State program.***
- ✓ ***The proposed common indicators program contemplates using a Management Review Board (MRB) to make the decision on the adequacy and compatibility***
- ✓ ***Compatibility indicators will be developed for use by the Review team.***



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FUTURE ACTIONS

- ✓ ***Publish draft policy statement in Federal Register for 90 days***
- ✓ ***Conduct a public meeting on February 22 and 23, 1994***
- ✓ ***Prepare a Commission Paper transmitting the final proposed Policy Statement***