UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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1250 I St., N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BRIEFING BY ORGANIZATION OF AGREEMENT STATES

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PUBLIC MEETING

U.S. Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Wednesday, February 1, 1995

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

COMMISSIONERS PRESENT:

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

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

JOHN C. HOYLE, Acting Secretary

MARTIN MALSCH, Deputy General Counsel

RICHARD A. RATLIFF, Chairman, Organization of Agreement States

ROBERT R. KULIKOWSKI, Past Chair, Organization of Agreement States

THOMAS HILL, Secretary, Organization of Agreement States

P R O C E E D I N G S

[10:00 a.m.]

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

This morning the Commission is to receive our periodic briefing from the Organization of Agreement States. We were last briefed by the Organization in February of last year.

I'd like to make a few general comments because there's been so much activity within the agreement states and between the agreement states and the Commission. These are obviously personal views, but I think we've seen significant progress particularly in the last year towards achieving a consistent materials radiation safety program across all the states. This progress has occurred largely as a result of improvements in communication between the Organization, between the individual agreement states and the NRC. I think that's due in large part to our recognition of the benefits that we get by increased Agreement State participation in all stages of the regulatory process.

Accordingly, the Agreement States program with 29 states has become the centerpiece of the National Program for Nuclear Materials Safety. In fact, my own way of looking at our materials program is that we have our high-

level waste program, we have things that we have in common with the agreement states and we have everything else. This is really central to the way we think of materials regulation.

The ongoing effort to develop a set of common performance indicators in order to assess agreement states and NRC regional programs on, as appropriate, a common basis or a basis which is different only where there's reason for it to be different, this program I think is the best example of the benefits that can be achieved through the active participation of all of the affected parties. The agreement states have been full participants in the development of the indicators, both as commenters and as volunteers in the pilot projects that we've used to implement the program.

These common performance indicators, if done well, represent the most effective tool for measuring progress not just in the agreement states but for all citizens of the United States in achieving a national program that has a certain amount of consistency on protecting radiation safety. But, there's always a but. There are still major barriers that remain towards getting a more effective materials management program.

Although the NRC has made significant effort to involve agreement states in the regulatory process, it's clear that we have yet to gain the full trust and confidence

of the agreement states. There's still a lot of mutual discomfort as to where we're really going and what are we really trying to do.

In addition, although the overwhelming majority of the agreement states have adequate programs, still quite a few agreement states have yet to adopt, or at least to implement through license conditions, key regulations such as those equivalent to the radiation protection standards in our revised Part 20. These barriers, both the communication and trust barrier and the implementation of some of these key regulations, have to be overcome before we can consider that our program is completely successful.

There will be other challenges in the future. These challenges will take the form of strict resource constraints, both at our level and at the agreement states level, budget realities at state and federal levels being such as they are. Only through increases in organizational efficiency can we continue to harmonize the NRC and the agreement states programs. Notice I chose a word like harmonize, not adequacy, not compatibility, but harmony. You have to be in favor of harmony. But it is essential that the programs be harmonized, that they not be different except where there are reasons for them to be different when it comes down to the absolute rock bottom questions of health and safety.

So, we just have to continue to work together. We value the relationship. We will continue to foster this relationship. We see it as a mutual relationship. We're quite sensitive to the fact that the agreement states have the authority for running the programs in their states and we hope you're sensitive to the fact that the Congress still holds us responsible for radiation health and safety throughout the country, whether we have direct regulatory responsibility or not.

Commissioner Rogers?

COMMISSIONER ROGERS: No.

CHAIRMAN SELIN: Commissioner de Planque?

Mr. Ratliff, we welcome you and your colleagues here today.

MR. RATLIFF: Thank you very much, Commissioner Selin, Commissioner Rogers and Commissioner de Planque.

I want to introduce myself. I'm Richard Ratliff. I'm the Chairman of the Organization of Agreement States for 1995. As you all know, Bob Kulikowski from New York City is our past chairman. At our agreement states meeting in October in Maine, we decided that we really needed to be able to track some of the history of the Organization so we can look and really see that progress because a lot of times if you are constantly up against a problem, you think there's no progress. But if you document, you can see that

great strides have been made over time and they really have.

So, we unanimously decided to create a secretary position and Tom Hill, who has been in this position as chair of the OAS, agreed to serve in that position. That will be a three year position. So, I think over the long-term that's going to be much more beneficial to us and the NRC as we look at where we've been, where we're going and our needs in the future.

I guess if they could put the first slide up, that would work fine.

[Slide.]

MR. RATLIFF: Terry Strong, the program director from the State of Washington, will be the chair-elect. But because of surgery and also budgetary restraints, even though he would be paid by NRC, he was not able to make this trip, but he'll be here for managers workshop and agreement states meeting and here next year, God willing, to do what I'm doing today.

Basically we're not talking as individual states but as the group, the Organization of Agreement States. Historically it's been a successful program. The real proof of this in my mind, one time I had left radiation control and went to work for hazardous waste. Dealing with the EPA's programs where they delegate their authority rather than agreements program where you've actually relinquished

authority to the states. Even with the money attached to it, the program wasn't as successful as we have with the NRC. I think we have dedicated health physics, health professionals in our areas in both programs and I think there's always going to be minor things to work out, but I think we're along the road to a much better situation.

In fact, I agree with you, in the last year we really have had better communications and I think Dick Bangert from the Agreement States Program, as well as Chip Cameron who has worked with us closely on the Federal Advisory Committee Act, need to be complimented because it really has helped. What we thought may have been a real hurdle was able to be lessened and it's worked real well on our communication and our worries about what communications couldn't occur. So, that's worked out real well. I want to thank them for their help.

CHAIRMAN SELIN: I'm very pleased to hear that.

MR. RATLIFF: Yes, and I think we all realize that we -- with radiation it's unique because you can't see it, touch it, feel it. So, we have that camaraderie just because we're in this field and we're in the regulatory side of it. We really want to see things done well. So, from the states standpoint, we really feel this need for communication and going together as co-regulators, but really, even if you can't always be co-regulators, at least

going hand in hand to complement each other's efforts. That was, when I get to some of the status of the agreement states, some of the things we're going to talk about.

You know, we've talked about being co-regulators several times. It's a unique program under the Atomic Energy Act but, like I said, it's been successful. I think mainly because we really have been able to work out our differences. If we didn't have any differences, I think the program would be stagnant and we probably would not be moving forward anyway. So, I think we'll always have a little bit of questioning each other on technical and other issues, but I think that's healthy.

You know, our states are going through a major continuous quality improvement, total quality management program and a lot of times we get fixed in that box and it's good sometimes to think outside of that box and look at the different paradigms that we just don't consider as a possibility. I think that's worked real well this time with the staff in looking at the overall programs.

The states' comments on rules, especially on IMPEP, worked well. One of the areas that we would hope in the future, since there are official transcripts made at the managers workshop and the agreement states meeting, we'd like somehow when the states take a unified position, either by voting and most times it will be a vote, that those

comments on a particular rule could be somehow read into the record as official comments from not only the Organization of Agreement States, but the 29 states as comments on the rules because sometimes we've noted that certain rules -- and one in particular we're thinking about is in Part 20 where most of the states are probably not going to have controlled area. Other than reactors, most of the facilities, the controlled area didn't really make sense. It could be there, but it's really not needed and if they could control an area. When we found out about the reason for keeping it, there was only three comments in favor of deleting. Yet all of the agreement states had really gone on record saying they'd like to have it deleted.

So, somehow maybe some legal, logistical work, but I think that would help.

CHAIRMAN SELIN: And that --

COMMISSIONER de PLANQUE: Is there --

CHAIRMAN SELIN: Sorry. Go on.

COMMISSIONER de PLANQUE: Do you know of any legal or administrative barrier to making that happen? What do we have to do to make that happen?

MR. RATLIFF: That's a good question, I think, for your General Counsel. But if we have to go on record with an individual voice vote where you would have the 29 states, I think that would be fine because that way if you did have

some that were against it or decided not to vote, at least you would have that record.

As you know, one of the things we're getting to, all the programs that were involved in the states, we really have such comprehensive programs that this is just one part of it. So, we've been kind of having certain states that have more staff give comments that are sometimes views of most of the states. Illinois has been a real good example of doing stuff. I'm lucky in Texas. I have a staff that can review every rule. But some states, they really need to protect the public health and safety first. So, if there's some way we could work that to get our comments --

CHAIRMAN SELIN: I don't think that should be all that difficult. First of all, on the one hand, we don't do it by vote. We don't go around and say, "How many in favor?"

MR. RATLIFF: Right.

CHAIRMAN SELIN: So, it's not as if the number of people who are commenting is a strict number that we have to control in great detail.

MR. RATLIFF: Yes, I understand.

CHAIRMAN SELIN: The fact that it's the sense of the agreement states as opposed to one or two carries weight because we care about what the constituencies think. But whether we have a resolution from the Board of Directors or

it's a unanimous piece, that's really not so important. We are supposed to concentrate on the substance of the comments and only secondarily on where they come from and how large a group they represent.

MR. RATLIFF: I agree.

CHAIRMAN SELIN: On the other hand, I'm aghast that somebody told you that the reason we ignored your comments where there were only three people --

MR. RATLIFF: Not necessarily that that was the reason, but when you looked at the comments there was only three that were in favor of deleting it, whereas I think maybe you can see where we're coming from if the agreement states all agree unanimously, and this is one issue that we did agree on. I think, as you well know, 29 states, we don't agree on very many things themselves. Sometimes I've thought it could be the disagreement states.

I think it would be beneficial. That way you really get our input and it may be split votes sometime. That's why I think if General Counsel could give us some guidance, we'll follow that when we have our meetings and that would be beneficial to us and to you, I think, on getting the input from the states.

COMMISSIONER de PLANQUE: So, the big problem is defined in logistical way, to make those comments part of our record on the various issues.

MR. RATLIFF: Part of the official record, because I could see where we may have several votes on several rulemakings that you have in progress and that one transcript, which is an official record, if it somehow could be our official comments. If that's not possible, let us know so that we can look at other mechanisms to go forward.

COMMISSIONER de PLANQUE: To make that happen.

MR. RATLIFF: I think it would be a positive way for both groups to be able to work together.

[Slide.]

MR. RATLIFF: I wanted to bring up -- one of the things that we, on the second slide on the status of the agreement states, that we really do have comprehensive programs. This year when it came 1995 I have some trepidation because at the same time our natural occurring reactor material rules were coming forward. Multiple states were working on that. We're getting so much input. Mammography has been a major program where it's again a delegated program where FDA is having the states do the inspections. When we look at all -- with accelerators, we're seeing a drastic increase in the use of electronic products in all industries. Then the non-ionizing field where every time one of the national TV news shows has a study that portable telephone antennas cause problems, we're inundated with calls. So, just make sure that you all

remember that our programs really are so comprehensive that sometimes just trying to keep up with the NRC rules is tough work, but we really, I think, make a pretty good effort at really trying.

The other things that we're faced with in the states, I think, are the same thing that you're seeing, dwindling resources. The states have various ways of funding. Some states are strictly on general revenue with no fees and I think that's the exception. Most states have fees in place. Some of them are similar to NRC's. I don't think any quite to the same magnitude, but some states have general revenue and then they're required to kind of put in what they take out of the pot. So, you really have no chance for growth. Other states may have the fees reappropriated and then you do have that ability to grow. But we're seeing overall certain areas with cutbacks, but the funding is just going to be tight and we want to work with NRC because down the road we can see that there may be NRC cutbacks. If we can work together and see what both of our combined resources is able to accomplish, that will be a good positive benefit. I think that's one thing that I think will help.

In the states, for some reason, we tend to lose a lot of our people. We train good people. Luckily a lot of them go to NRC and it helps both because we have that

knowledge with them and it helps, but it's still a continuing education problem. I think Greta Dicus in Arkansas put it better than anybody I've heard because in Arkansas, with their salary structure being primarily the lowest of the agreement states, when her program review comes up she does excellent on training because she's training people all the time. But on staff turnover, does pretty poorly because we hire them a lot, Louisiana. So, I think that's one thing that we need to work forward with and it's really a state issue but also a national issue on health physics.

Some states have the split jurisdictions. We always said we don't want to be like New York in Texas, but now we are. Our jurisdiction has been split for waste, uranium in one agency and the rest of the program in our Department of Health. But we found that you can work through those. Those splits don't have to stop communication, but our interaction with NRC gets a little more difficult. So, that's another thing that we have to really look at when we're dealing with NRC, to make sure that all parts of the state that are really -- because a state agreement that we all coordinate our efforts.

Then, a lot of the federal unfunded mandates that we have to deal with. Some programs, like radon, are funded. Some, like mammography, but others there really is

no funding. So, where we have licensees and x-ray registrons, we can charge fees, we're okay but there are still certain areas we have to look at what is the basic premise in protecting health and safety and how can we do that best with the resources we have. And I think you all face almost the same issue, but just to let you know that we really have those and even on some broader scales sometimes.

COMMISSIONER de PLANQUE: Do you get any funding from EPA on any of the radiation programs?

MR. RATLIFF: Primarily on our radon program only. Certain states get a lot of money, but those are the states that have high radon levels and have more headaches. States that have had low radon have pretty much discontinued funding with the EPA because the amount was so small that it took more time on the contractual arrangements. The major funding that has been helpful to the states with DOE facilities in the last five years has been the cooperative agreements, agreement in principles, where in Texas we have the Pantex nuclear weapons plant, we have the Oak Ridge plant in Tennessee, Hanford, and through that we have really been able to supplement and strengthen our environmental monitoring and our emergency response programs because through those programs we've been able to totally reoutfit our laboratories with new jelly systems and systems that can detect plutonium. So, that DOE grant program has worked

well.

Other than that, it's primarily in the x-ray area because the federal Food and Drug Administration enforces the manufacturing standards for x-ray machines but really has not had an arm to really do individual inspections. So, for years we've been doing contracts for a certain number of inspections each year to check, when a machine is installed, is it meeting the standards properly. Then, when FDA was given the responsibility for the Mammography Quality Standards Act, they realized that they just couldn't do those inspections, but Congress wants them done annually. So, they came to the states where we have trained x-ray inspectors and it's probably the most rigorous program that we're under. Each inspector has to go through three levels of training courses that are real detailed and even the senior x-ray inspectors had to really press themselves to do well because the inspection requirements are so difficult on this because it's really a problem where you're seeing a major threat to women's health. But that program though is 100 percent cost recovery. We basically do the inspections and everything we spend.

So, we're getting really more from DOE and from FDA than any other program. I think most of the states are the same. The ones that have radon problems have had fairly good large-funded programs from EPA. If there's any others

I'm missing, why -- those are, I know, the main ones that we deal with.

Then, looking at the umbrella policy, a lot of the things in there, we agree that they're going to be good by policy. A policy statement I think gives you a much better chance than codification of Agreement State rules. For one reason, it's easier to change. It's --

CHAIRMAN SELIN: This is a red herring, Mr. Ratliff. We never really intended to pass a single regulation that would -- the problem was that so much of our relationship with the agreement states was in letters. We just didn't have it. The whole idea was not so much to pass a rule that would pour this in concrete, but to have just more explicit statement of what the current understanding was.

However, we believe that between the overall policy statement with respect to agreement states and then the work on adequacy and compatibility, that that will meet the objective. So, there isn't any attempt to do anything further in the way of codification in that area. There is a question of relationships, how does one exceed, how does one withdraw, whether it's to be a concept of probation, et cetera. But as far as the basic relationships, we believe that the compatibility adequacy statement and the general agreement states policy, plus the work that the IMPEP

reflects is plenty. That would put out in black and white where people can find what we consider to be the main elements in the relationships.

MR. RATLIFF: I think we agree with that. It's just that when the Federal Register notice was published and it talked about this, one of the things under umbrella policy was codification of Agreement State rules, which was officially in the Register. So, we had --

CHAIRMAN SELIN: I think you have to react to these. Federal bureaucrats are very slick. But there's nothing --

MR. RATLIFF: Okay. And that's good to hear because I think our communication on this point, we've really been working well on compatibility and adequacy and what the requirements are. Each time when we finish our meetings, we go back and talk to our attorneys general and they look and see, well, what does it really mean when the state signed the agreement and the authority was relinquished. So, I think this is going to be one that we need together though. We'll never get anything solved and with our resources going to be taxed in the future, it will be better for us to get on with that.

But the codification was really a sore issue with the states and all the states, when I polled them just to talk issues, they wanted to just make sure that brought that

forward because they want to work together --

CHAIRMAN SELIN: There is no such issue.

MR. RATLIFF: Okay, good. That really makes it a lot better. We really have been impressed by the impact. I don't know if you're aware, but when we first got involved with this and we had the agreement states meeting in Arizona --

CHAIRMAN SELIN: You were less positively impressed at the time.

MR. RATLIFF: Definitely. We had state people wait until 10:30, 11:00 at night to get their turn at the microphone to give their comments. It was real good though because most of the comments that we brought forward have been put into your pilot program and we really hope that if and when the pilot program evolves into a standard program that we can work with you --

CHAIRMAN SELIN: Absolutely.

MR. RATLIFF: -- in things that we have there. I think that would be beneficial to both of us.

CHAIRMAN SELIN: Let me just make it clear, not on any one of these things, but we consider the agreement states as a laboratory for NMSS to learn as well. I mean the issue isn't agreement states versus NMSS, it's what can we learn about regulating different types of risks. So, when we talk about more integration and more communication,

it's not one way. We really want to make sure that the places where we're the agreement states, so to speak, the 21 states and the territories, et cetera, where we have the regulatory responsibility, are informed by the experience of the agreement states as much as the other way around.

MR. RATLIFF: I agree. I agree. That's really what we're looking for, that common goal of protecting public health and safety. If we can keep that goal in mind because sometimes, like you say, we're in bureaucracies and we tend to get focused on something other than the real issues.

And really that's what comes up with sealed source and device reviews. For years, this is one area where the agreement states have conducted them. In some instances, I feel agreement states have not done a good job. Sometimes we've done fantastic. We've all have sources that have failed. We've had radiography cameras, Wesoff capsules, static eliminators, so many things that we've both looked at and you're always going to have some human errors or something that even with the best reviewed plan, it may not be manufactured that way.

But I would really think -- several of the states asked me to bring up the fact that when they had their program reviews, the letter would come back and they had good, positive comments about their sealed source and device

review program, with some minor recommendations that they maybe document one area more or put it in a format that would be more consistent with NRC's program. But those areas were withheld as an area of compatibility. That was the main question there is on sealed source and device we really need some standards that we could work with. The workshop that's been postponed, I think, will be of benefit where we get everybody together and this is what we expect. This is what we'll review. I think that will be helpful.

CHAIRMAN SELIN: Fair enough. I want to tell you that there's a serious substantive problem with sealed sources. It's not just the question of language the way the codification is. We are concerned, I am personally concerned about three things. One is the possibility of shopping an easy state because once the sealed source design is approved in one state it's almost automatically on the register for all states and the NRC. So, that isn't really an Agreement State issue, that's truly a national issue and we need to be satisfied that there are minimal standards that people need to follow to have that.

The second is that there have been a number of states that have very good programs except for sealed sources. Some of the smaller states find that the amount of resources it takes to run a sealed source program is just way out of line with what they can afford.

MR. RATLIFF: Right.

CHAIRMAN SELIN: And I've encouraged the staff to discuss with the agreement states, et cetera, the concept that maybe a sealed source is something that doesn't have to be part of a standard Agreement State program, that there be some discussion of local option as to whether they want to undertake that. I mean Texas has an exemplary program, but there's some other even large states that have had real problems with the sealed source, whereas the rest of their program is terrific.

The third thing is we're just not very happy with our own thinking about sealed sources, period. There are too many places -- this is not so much the approval of the sources, but the whole question of tracking them and having some kind of a register. There are too many places where the sealed source shows up in a scrap heap or what have you. I realize that that's not the approval of the design. That has to do with the execution. But in general, sealed sources are an area of concern where we have a lot to talk about and it's not just a question of communicating in the sense of making sure that you understand what we're doing and vice versa, but really thinking together about what's the best way to handle what I think is an issue that does have some health and safety considerations.

MR. RATLIFF: I agree, especially with the large

activity sources used in medicine and the different devices that are general licensed. I think having a common performance indicator, need I say that word and the other states will kill me, works well though. And I think that this is an area that some states were great, but you have the uranium agreement, the low-level waste agreement and you may have an option maybe that the states could be an agreement state for the materials without the sealed source and some states, I think, would probably welcome that because, like I say, they don't have the staff.

One of the problems I could see is if you had a major product that needed a lot of review. Some states that don't have fees refunded to them may have a hard time doing some third party engineering studies. So, states that do, it works well and we can always make the applicant go and have the third party engineering studies and then review those. But I think this is right. This is an area that I think communications will help and then truly look at what areas have been problems and are there certain areas that are real simple.

In the states, we also have the NARM Program where there's a lot of sources that are naturally-occurring radioactive material or accelerator produced, and we have similar reviews. Some states that are not what's called licensing states through the Conference of Radiation Control

Program Directors, we won't approve their sources and they get highly upset because we don't have the confidence that they're under some control.

I can see your point there that if we can have a program in the NRC where we're all assured that in Texas we're doing a good job and if not you have some guidance, that will help. I think it will give confidence to everybody when you're reviewing these because that initial review, where you're going to license it elsewhere and rely on that review, you have to make sure the review is done well.

So, I think this will be an area that a workshop is real important and then to work together to come up with some standards. I think that will be real helpful.

DR. KULIKOWSKI: It also should be made available electronically by the NRC. I think that's one of our real problems. We don't do reviews in our program in the city, but we do rely on the hard copy. I have an entire bookshelf full of four inch binders with these things in it. If it were on diskette, it would be a heck of a lot easier.

MR. RATLIFF: I agree.

The topic general license devices ends up being one of my and many states real concern. We spend a lot of time at electric arc furnace locations where they smelted sources. It's surprising how many of them have

sophisticated monitoring systems but when you're bringing railcar loads of scrap in, even if you have an unshielded 200 millicurie cesium source, they may go undetected until it's smelted and the flue dust is contaminated. Then it sets it off easily.

Several years ago the NRC encouraged certain states, and most of the states I think responded, and we looked at our general licensees. I think we all found the same thing, that there were many of them that we couldn't even locate. I think there's been a good effort by the manufacturers to notify us. We have good files that every quarter we get a list of sources that have been sold in Texas and trying to track those. But when we went to look for these people, many of the businesses just didn't exist anymore. Then, a larger number we'd go to, they had no idea that they had a radioactive source. Some of them after you would go through multiple interviews with people and they would call someone who had been there 20 years ago, they might find it. Many of them we found were painted over and in part of a plant that was no longer used or had been put in storage.

But the whole issue of control has been a problem. I think after the Juarez incident in '84 when we had all the massive contamination of cobalt in the scrap and the table vases, and then incidents in New York with the smelting,

it's just continued to escalate. We get a lot of comments, and I know you do too, from the scrap dealers, the steel manufacturers, because they really see a problem.

Several of the states have taken on the issue by requiring that every general licensee be required to notify the agency that they have the source. It's not a true specific licensing, but it's a step greater than the general licensing. Each state has done it different because we've been kind of on our own in this area, but the accountability has really gone up. I can guarantee when you send someone a bill, and I think in Texas it's like $400.00 a year, in Louisiana it's similar, Oregon is high, they're going to check to see if they have that device. So, at least once a year you have contact with them, whereas before we may inspect them every five years. Then, since they were general license, they were really not a priority. We had our specific licenses.

I would hope that we could work somehow with NRC on this because we spend an incredible amount of time working with the contaminated facilities after they have had one of these sources get through their detectors and they have smelted it and the number that we find that they do catch. They do catch a lot of them. Just looking back at the Texas data and some California data, about three-fourths of the ones that we have found at scrapyards or that the

companies have found and we've responded to have been generally licensed devices. There's just less recognition of regulatory requirements because of this system and I think there's some devices that we've seen hardly any problem with. Certain gas chromatographs, certain small devices there's no problem, but when you get to hundreds of millicuries up to curie quantities of cesium, we really have concerns because we have had so many close calls for actual shredding of cesium sources, cesium chloride, which we know would cause multi-million dollar cleanups.

So, this is one area we'd really like to work with NRC on to try to come up with something that we could do at the national level because each state, we're taking our little stab at it, but the scrap comes from all over the nation. These places, they buy it wherever they can get it and a lot of it goes to Mexico. I'm dealing with the Mexican officials since we have the longest border on the south in Texas. They really want to work with us as well because they really feel that's an issue that would help them as well because they have been stung several times, so to say. So, this is one area I'd really like us to work together on.

CHAIRMAN SELIN: You're preaching to the choir.

MR. RATLIFF: Okay. Good.

CHAIRMAN SELIN: We're aware of that. We're not

so sure that the solution might be -- and this is a kind of economic insurance. At some point one has to be able to figure out what the cost would be of the additional regulation and would the premiums be greater than the casualties that we're insuring against, but we don't have that basic information at this point. That's a pretty high priority for our staff to --

MR. RATLIFF: Okay. That's good to hear though.

COMMISSIONER ROGERS: Before you turn the page, the choir would like to --

MR. RATLIFF: Okay.

COMMISSIONER ROGERS: Just that isn't it true that the absence of low-level waste repositories is compounding this problem? The fact that no state has got them makes this a much worse problem. There's no place to send these things.

MR. RATLIFF: Yes, even more so than that because when it goes through the flue, it becomes a RCRA regulated waste, which is a hazardous waste. So, therefore, you have a mixed waste when the cesium is contaminated there and there's very few places to take this material.

COMMISSIONER ROGERS: If the possessors of these things initially could get rid of them with ease, I think it would help a great deal.

MR. RATLIFF: Oh, I agree. If, in fact, there

were some legal mechanism to make the manufacturers take them back when they're done with them, probably have theirs. Many of the ones we've found, the manufacturers no longer exist, so the devices with cesium have a longer half life. They've been used maybe or just abandoned. So, that mechanism of even knowing they have a source -- I don't think we've had anyone who deliberately would have put one into the scrap system to get rid of it. There's easier ways, just to bury it at a local landfill if your intent is to get rid of it because by putting it in the scrap you risk someone catching it and not smelting it. We've been able to track sources back by the serial number on them and there's been good recordkeeping, I think, in industry over the years on this. Even licensees that are terminated where we could go back and we actually have tracked just individual sources. But it's the fact that the ones that don't really have an ongoing radiation safety program and the general license programs, it's just something that they don't even know they have.

I think that's our greatest concern, is that I don't think the waste issue becomes their problem. But in general, we have other sealed source users that this is a problem, there's no place to get rid of their sources and they're storing them and we're having more and more requests for hearings on these storage sites even though it's the

same source that were used in multi-quantities at sites. When it "becomes waste," it becomes a problem. But I agree, yes, if we have more waste site access.

COMMISSIONER de PLANQUE: In practice, what are you doing now if you locate sources that you can't attribute to an owner? They more or less become orphan sources. What are you doing now in the states that have no access to disposal? What do you do with them?

MR. RATLIFF: We've actually designed a down-hole storage area in Texas and we feel it's part of our job as protecting the public health and safety, we take them out of the public domain and put them under a control.

COMMISSIONER de PLANQUE: Is this typical in the other states that don't have disposal options now?

DR. KULIKOWSKI: Yes, we do the same in New York City. Luckily, we've not had to deal with a large source. We've had small ones to deal with so far.

MR. RATLIFF: And where we've had complete sources with the device abandoned and we go through legal process, if they're in shape where they can be reused we work through the Conference of Radiation Control and through our own state to try to get these sources back into useful commerce because they're really an asset to someone. We've been able to get rid of almost all of our well-logging sources that we inherited when the oil bust took place. So, that's been

helpful. But there's still certain sources no one wants.

COMMISSIONER de PLANQUE: Okay.

MR. RATLIFF: Commissioner Rogers, does that answer --

COMMISSIONER ROGERS: Yes.

MR. RATLIFF: Okay. The medical quality management, really I almost hate to bring this, but it's been one of those. I can see with the problems with the high dose therapy units and all of the problems there, it's one of those that really you need to make sure that people are using them correctly. It's just to the degree whether all the definitions in that rule should be division 1 levels of compatibility or could states -- I know Bob can relate a New York City experience where they've had rules in place even before NRC and can there be some flexibility here so that each state, because of our regulation of the medical community through our medical boards and through our x-ray programs, we really have a lot of contact, is there some flexibility we can get there.

I think you'll see that we in many of the states have continued with the old misadministration rule numbers where we actually are requiring a lot of the diagnostic misadministrations to be reported. This sometimes is real beneficial. We had an occasion where a pharmacy was just not operating correctly. One hospital ordered five capsules

of iodine, they got seven. One ordered ten, say, and they got six. Because of those multiple reports from different licensees, it gave us the spotlight that this pharmacy has supplied them all and it gave us the insight we needed to go look at that pharmacy.

So, I think from that aspect some of the more stricter requirements on reporting haven't seemed to be a burden on the licensees and we've not had complaints about it, but I think they would have more complaints about some of the other paperwork that's required. So, I would just ask for some flexibility if possible here as we try to implement this as we go down the road.

I think your National Academy of Sciences study is going to be excellent. Whether they'll tie together or not, I'm not sure, but I think we're on the right track. But we've really -- I know in several of the states we have to go through our advisory boards and then our regulatory boards and the biggest question that keeps coming up is what is the risk, how many do we have versus what is the cost of this whole paperwork.

Trying to go through that, sometimes it's hard for us to show the justification for real detailed requirements when programs are already in place that have to meet the health care financing rules, if they're a HCFA hospital. So, there's a lot of things that we could work on this one.

COMMISSIONER de PLANQUE: So, your problem primarily with it is the paperwork requirements?

MR. RATLIFF: Yes. Oh, yes. I think there's no question that you have to control and make sure that people have in place programs where they're going to administer therapy doses correctly, that they have procedures, and many states have done it over the years through license conditions. Before NRC had a part of the rules, we all had all of our therapy licenses by license condition in separate licenses. So, I think there are other ways you can get at the same net effect, but right now we don't have that flexibility.

CHAIRMAN SELIN: That small part of the new policy statement is intended to recognize that there are different ways of proceeding and getting at an objective. It need not necessarily be through a regulation if the state achieves the same goal through license conditions that we would --

MR. RATLIFF: And I think that would be helpful.

CHAIRMAN SELIN: But that's only a small step. You have much more serious considerations here than just whether it's in regulation or license.

MR. RATLIFF: And I can see what you said earlier where you have responsibilities to make sure the states are doing right. I know that I wasn't up there with you when Congressman Synar was talking to you and all these things.

I can see --

CHAIRMAN SELIN: That's not a serious problem in itself. The problem was not that he was so hard on us, but that he was saying things that were true.

MR. RATLIFF: Oh, yes, I agree.

CHAIRMAN SELIN: But I see really three separate things here. The first is whether we're going to change based on the NAS and so have the states go through all that trouble and then come back and have a different set of conditions. The second is there is a compatibility question. We really do need to have light statistics on a light basis on misadministrations, et cetera. But the third is whether the rule is too prescriptive, whether say for those facilities that are subject to accreditation or other such questions, whether we shouldn't try to accept what they're doing without saying no, you have to do things more our way in addition to your other way.

MR. RATLIFF: I think that's good to hear because I think we can work on those. The definitions being division 1, in some cases it was -- one word that could be substituted almost meant the exact same thing but it was a real hard line and no, you had to use that definition of that word, which I think we were after the same goal. The data collection, I think it's getting better.

COMMISSIONER ROGERS: Just on that, this

requirement of coming into compliance, that was supposed to have taken place by January 25th of this year.

MR. RATLIFF: Oh, yes. You'll find that --

COMMISSIONER ROGERS: How many states are not in compliance?

MR. RATLIFF: I'm not sure, but I think the Office of State Programs will find out soon because yesterday they faxed each of the programs a request to send them their medical regulations so that they could look at this. So, I would just guess that at least a third of them have not adopted per se the exact verbiage. I think every state has misadministration and has some other requirements, but they're not going to have the strict compatibility requirement that you have in place right now.

DR. KULIKOWSKI: I know of at least one state that has kept the old definitions for misadministration and I believe doesn't intend to change at this point.

COMMISSIONER ROGERS: Well, there was a three year period to come into compliance and it's just a question of what happened during that three years and to what extent have these specifics become -- you know, really gotten on the table and identified, put the spotlight on them and say -- I mean saying what you're saying right now. As of now, people are out of compliance for beyond the due date. There was a three year period to come into compliance. All I'm

sort of saying, I mean it's not very nice to say it, but this is kind of late to hear about this. Now, I'm sure it's not your first -- but bringing it up at this point, I think we have to recognize that when you suggest that we wait until the NAS review is complete, that's not going to come to us until December or thereabouts. Then that's got to be reviewed and looked at. So, we're talking about another two years or so before the impact of that will be clear.

So, what should we do? Just sit on our hands and wait? Does it make sense to try to come into compliance or what?

DR. KULIKOWSKI: Just as an historical note and some personal involvement since the late '80s actually on this QM rule and it was termed a number of other things, I think part of the problem, this is a personal perspective, is that there are some basic philosophical differences between the way some states see the way a quality assurance, quality management rule should be implemented and the way NRC's has been written. I know a number of states have been frustrated in the fact that there were several ad hoc working groups that met numerous times in various locations throughout the country to discuss exactly this both with NRC people and Agreement State people. The discussions always seem to result in NRC's perspective prevailing. I think that may be part of the difficulty with this particular

rule. Again, that's a personal sort of observation of having been involved with it since about 1988.

MR. RATLIFF: And that's one area where we really have expressed -- I think from the collective state concern about this rule, that we have problems we didn't know, but we really didn't agree with many of the parts of it, especially the definitions and the requirements there. So, we've been having that exchange knowing that date was coming and then at the same time, like I said earlier, our real push on mammography and some real requirements that came through at that time which were definitely health-related when we looked at the women's health issue and the fact that poor mammograms and getting false negatives that were bad diagnoses was a major health problem. We had to look at some emphasis on certain other areas too.

But you're right, this is an area that you really could slap our hands because we're guilty. We did not follow through on some of these and I it's a scenario I think we really need to work to resolve. If, in fact, it's something that's going to be unflexible, we'll most likely have to change our --

COMMISSIONER ROGERS: Well, it's just that I'm saying when we're hearing about it at this level, at the Commission level, as something that we ought to take a look at, I'm uncomfortable when that comes to us after the due

date of compliance for a three year period. I'd like to hear about that a great deal before that January 25th, 1995 date came up in such a way that we just don't slide past it. You know, well, a third of the states are just not in compliance. That says that there's a real problem of some sort and how are we going to fix that problem?

I'm not sure that waiting for the NAS report is the right way to do that. I think that we have no idea of what they're going to come out with, but they may or may not address this kind of issue very explicitly. They may be looking at things from a more global point of view. I don't know. I have no idea at the moment what's possibly going to come out of that report. But it does seem to me that when we have a difficulty of coming to agreement of this magnitude, that we ought to try to solve that before we get past the point at which things should have happened.

MR. RATLIFF: Looking back at last year's notes when Bob Kulikowski briefed you, that was one major part of his briefing was that we really had an impasse there. So, we really did come at least a year early to the Commission and through staff it's been ongoing discussions about the problem with it.

COMMISSIONER de PLANQUE: For clarity, perhaps I should know the answer to this but I don't offhand. Is it clear between the states and the staff what are issues of

compatibility and adequacy with regard to the QM rule?

DR. KULIKOWSKI: Yes.

MR. RATLIFF: Pretty much so.

DR. KULIKOWSKI: This was discussed at the Portland meeting last fall with the SR-6 Committee from the Conference which is working on that. It's our understanding that the definitions are division 1 compatibility, which means they cannot vary from what is in Part 35, whereas other portions of the rule may be more stringent in division 2.

COMMISSIONER de PLANQUE: What you understand on what's required by compatibility and adequacy, is this based on our current policies and would it change under the policy currently under consideration by the Commission?

DR. KULIKOWSKI: The rule was adopted in 1992, so it was the policy that was in effect at that time.

COMMISSIONER de PLANQUE: Do you see that any of this might or could change under the new policy?

DR. KULIKOWSKI: From my personal point of view, I would hope that some of it could change. I realize that there are certain things, and I've said this in various arenas as we've talked about the compatibility issue as far back as a letter to the Commission four or five years ago, that a certain subset of all the regulations and rules need to be invariate. These, taken as a group, should be forming

the basis of the compatibility, whereas basically you eliminate -- have only division 1 and division 3 rules, that you can address other things the way you see fit. As the Chairman said a little while ago, there's more than one way to skin a cat. When the program review is done, and I would hope in a peer review type environment, that the assessment is made of whether public health and safety was being adequately protected, regardless of the mechanism that you use to achieve that goal. It would give programs, NRC and state programs, increased flexibility to deploy resources where they're needed and, as has been mentioned several times, that is a real necessity in this day and age. We're looking at budget cuts all over the place. If we have one licensee, it is very costly for our program to do a rulemaking for that one licensee where I could address it by a license condition.

CHAIRMAN SELIN: That one --

DR. KULIKOWSKI: Just as an example.

CHAIRMAN SELIN: What it would take to satisfy us, that you're consistent, that would change with a new compatibility statement.

DR. KULIKOWSKI: Sure.

CHAIRMAN SELIN: The rigidity of the definitions would not be affected by --

DR. KULIKOWSKI: Yes. I think one of the things

that I've seen historically is that when -- and I don't know whether it seems to be a bureaucratic ailment that people like to have lots of little checklists of everything and so that virtually anybody can come in and do a program review. We don't -- I think we've sort of gone beyond the recognition that people that are doing these reviews should be health physics professionals and know what they're talking about and should be able to go in and make a professional judgment as to whether this is working or whether this is not working as opposed to checking off that this widget was done. Does language occur exactly the same way in the New York City Health Code as it does in Part 35? Now, there may be other constraints that prohibit that. So, I think we do need to get back to more of what I call a peer review type situation where the professional judgment of the reviewers needs to be given a lot more credence.

COMMISSIONER de PLANQUE: How much of your concern with this is coupled with the issue that you also oversee x-rays and mammography and other similar type activities?

MR. RATLIFF: I think a great amount because most of the states really see a need to look at misadministration rules for accelerators, certain of the large sources, large therapy x-ray units and in New York City Doctor Kulikowski's program really has started that and a lot of us are looking towards what New York City has done because the risks there

sometimes are much greater.

I think you're aware that several years ago in Tyler, Texas, two people died in an accelerator because of instrumental failure and technician failure. So, we see that there's just as many concerns in that electronic product generated radiation areas as there are in the agreement materials.

COMMISSIONER de PLANQUE: So the problem is distributing resource in accordance with the risk?

DR. KULIKOWSKI: Or the need really.

MR. RATLIFF: Right.

DR. KULIKOWSKI: Just as an example, for the external beam therapy units, we have about 22 cobalt-60 units in the city which is down about 50 percent from where it was four or five years ago. However, we have close to 100 linear accelerators. I certainly agree with the philosophy of quality assurance and we have a regulation which applies both to machine-produced radiation as well as to materials radiation and we feel strongly about it and we do look at it from both perspectives.

But we see right now that just based on numbers the risk is higher with the machine, with the lin. accs as opposed to the cobalt units.

MR. RATLIFF: And I think we're seeing more and more of the PET scanners, the positron emission tomography,

where you're using the accelerators to produce extremely high specific activity isotopes that are then -- with real short half life that are administered immediately to do new procedures that are ever evolving. So, things like that have taken a lot of time because you're really looking at these little mini cyclotrons at different university hospitals that we've had to do detailed reviews. Those are areas where you could have real serious health threats to the people operating them and the you're looking at new pharmaceuticals that are being produced. We're working together with FDA on that.

I think that there's so many areas in this. I think we can all agree though that we really want to make sure that the patient is protected. The bottom line, the patient is protected and if we could work somehow on this, it may just be that we're all -- the ones who have not implemented this rule now may be no compatible until we do, but I would hope we could get some flexibility on looking at definitions especially and work with staff to help resolve our individual state cases.

COMMISSIONER de PLANQUE: Thank you.

MR. RATLIFF: The data collection I think is one I put in there because we've worked on data collection and I think this is where NRC is doing something right. It really is good. You do a lot of things good and this is one area I

think you're doing real good. I hope that we're able to up to task to really do our share here too because I think the larger states that have had data systems and have tracked incidents and found that it's an invaluable tool to your regulatory program. So, the workshop that's coming up this next week I think will be real good on this.

In the idealized world you would have a database that had all of the x-rays, the accelerators, NORM, NARM, byproduct material, but I'm not sure it's going to be worth the effort because of the staffing resources. We were talking with Dick Bangert and his staff earlier before this meeting. I'm not sure how many enquiries you get from the U.S. Congress on how many x-ray machines there are or how many accelerators. At a state level we get a lot of input from individual legislators and members of the public on how many are in this county or in this area and we have our databases and we're able to address that. But I would think --

CHAIRMAN SELIN: That's not our problem.

MR. RATLIFF: Yes. And I would think at a national basis --

CHAIRMAN SELIN: We have two problems. The first is not to impose standards on the states that are convenient for our type of radiation which are very inconvenient. Since there's a lot of flexibility about how to define these

data sets, it's truly a cooperative effort to say, "What can you do so that New York and Texas speak the same language but that byproduct and accelerator also speak the same language?"

The second, the kind of data that we're really short of, there's no way we're going to get it from you anyway. That is proper administration. We're very rarely called on to compare even therapeutic administrations using byproduct versus linear accelerator. We're very much called on to say what share of the procedures was there in misadministration and there's no way we're going to try to get that through this database. We'd have to run a whole CDC for radiation therapy and we're just not going to do that. It's just not in the cards. We have drawn the line to say, "If you want that, go to the Department of HHS." We're trying to concentrate of what we can learn from the misadministrations.

I would emphasize one point, Mr. Ratliff, and that is there are basically no statistical anomalies in this business. Whenever there's a misadministration, there's something to be learned from it. You almost never just say, "Well, there is always going to be such a state."

I mean it's statistically predictable that there will be a certain number of misadministrations, but there's almost always something to learn in a major say therapeutic

misadministration about ways to improve the process or the training or --

MR. RATLIFF: I agree with that completely. In fact, each one we've had --

CHAIRMAN SELIN: The qualitative data as well as the statistical data is invaluable. We don't expect to put all that in the database, but we expect to be able to see something coming in in these reports and then be able to call up our colleagues in the state and say, "What really happened and what can we all learn from this incident or that incident?"

MR. RATLIFF: And the database, I think, is even more just in medical because with industrial radiography, transportation, containers that fail, those things that are under both our regulatory control will be really a valuable tool. The Conference of Radiation Control program directors had an annual survey of all the 50 states and territories and the problem with it is with good intentions they made it so long and detailed you could have received every type of information and compared it, but only about half the states responded. Then only about a third of the states responded.

So, the conference has established a task force, and there's an NRC person on it, to really look at is there a smaller data set that the conference can maintain so that when there are questions about how does this state compare

to this state, with even the number of x-rays machines, the number of accelerators, the number of teletherapy units, that basic data will be available. We're going to work through the Conference of Radiation Controls to try to develop that.

Then the final area, talking to Tom Hill, some of these really sounded where we could exchange information with you because we really see the downsizing and really have concerns and our own concerns as well assures us how this will affect our programs as well as yours. Really, I think under B there, what changes does NRC perceive in your regulatory structure in the next five years? It's just kind of an idea what you feel might happen.

CHAIRMAN SELIN: That's a question that requires an answer.

MR. RATLIFF: Right.

CHAIRMAN SELIN: I think that basically the Commission is playing with a number of ideas which are very far reaching on the materials side. We believe, and I think I speak for all of my colleagues, that there's a lot of the treatise that's built up over the years where there are regulations that you just can't justify for health and safety and we really wish to go through and reduce the number of things that we regulate. It could be minor things, but we just turn out -- our rules are too

prescriptive. It can be major things like the medical area where we just have real skepticism that the public health and safety is much benefitted by having so much more federal regulation of the medical application of byproduct radiation compared to say accelerator regulation. There's no secret that we are really concerned and it doesn't make such sense that not only are we concerned that radiation therapy receive a federal level whereas other therapy doesn't. We're even more concerned that say 20 percent of the procedures have the federal imprint whereas the other 80 percent or so don't.

It just doesn't make sense for us and we're considering much further changes in the medical area than the ones that you laid out. But we have a set of rules at a given time. We have to enforce them even if we're trying to work against them.

We're also concerned that we don't have a standard definition of what we consider to be safe doses in different rules or in different types of application. We have underway an internal effort to get all of these standards in one place and compare it, partly to see if we really mean it, partly to show the breakout ALARA considerations from health and safety considerations. We recognize that a cardiologist is inevitably going to be exposed to more radiation than an industrial radiographer, but it doesn't

mean that the standard of safety should be different for the two. What should be different is what's reasonable. So, we want to split out the health standard from what we expect in a particular case.

It's also clear that internally within NMSS we have too many barriers and we need to bring some pieces together. We're going to be spending more, not less, on those programs that we retail because they have been starved of some management support. You've seen this in the Agreement State programs where we've tried to do a lot with too little where our records aren't proper and our cases aren't proper.

But the main thing we wish to do is to make the rules more consistent across programs, to find places where we just don't think that we're contributing to health and safety and get out of that business where we can, but spend a little more time and effort on the management of the programs that retail. We don't have any intention of charging license fees to either licensees in agreement states or to the agreement states, but that doesn't rule out looking at specific services that we provide for free that might be more appropriate on a reimbursable basis.

There's absolutely no question that the current funding system is unstable. The ultimate case is 49 agreement states where the one licensee left in Wyoming is

being the entire NMSS bill. That can't happen. That just can't happen and we don't expect to make direct charges to the states, but one way or another the cost of -- there are only two kinds of overhead. There's the kind that's specifically allotted to the agreement states and it's the review program, et cetera.

But that's not what I'm concerned about. I'm concerned about the general scientific and technical basis for trying to establish standards which both we and you use or program practices. That has to be distributed more equitably. It's completely unfair that the 7,000 going to 6,000 materials licensees pick up the bill whereas a large share of that is in support. One way or another, we have to find a way to finance that that's more equitable. We can do more than we've done within the existing fee structure. We clearly will be looking for services that are really appropriate to bill to who get them. But that's small potatoes. The big thing is to get support from the Congress on taking up through not fee-reimbursable costs that part which supports all of the materials licensees and not just the NRC licensees.

MR. RATLIFF: Yes, I think that's a real good way because if you have that base amount of money that's there for -- there's bound to be things that you have to do that you have no one to charge, even beyond the state programs.

That's the same thing we face trying to get our legislature to at least give us a base amount to cover basic public health.

CHAIRMAN SELIN: There's about $15 million we figured out. Let me make it clear. If the 29 agreement states seceded from the Union successfully, we probably would still have the same expenses. We don't claim that the expenses are larger because we're supporting the agreement states as well as the NRC licensees, but we do claim that it's just not fair that the NRC licensees are picking up not only the cost of their activities but this general super structure that supports all licensees.

I would like to raise one issue just for you to think about. This new compatibility policy has real teeth in it. We've set ourselves a tough standard. We cannot argue that a regulation, although not required for the health and safety in a given state, if we can't argue that there isn't a national benefit for health and safety, we can't make it a question of compatibility. One such regulation that we've discussed is the possibility of a constraint rule in the clean air in order to avoid dual regulation both in agreement states and elsewhere.

We've basically decided that if we were to adopt a constraint rule for the NRC licensees, we don't have a basis for requiring this as a question of compatibility. It

doesn't meet the tougher standards. It would be nice to have the same rules so that people would know that they have these and EPA would be able to say, "Well, we expect all the states." But it would come down to the states voluntarily saying, "We see the benefit, that having such a constraint rule would be beneficial compared to having dual agreement state and EPA regulation." But that's an example of a rule that we wouldn't impose through compatibility even though there might be strong managerial basis, but it doesn't meet the tougher test that's in the compatibility statement.

There may be some others as well where we could argue that overall efficiency would be greater if the states would accept rules not necessarily verbatim but where we're not going to impose them because the tougher compatibility standard doesn't adopt them. We're going to go back retroactively and take a look at current compatibility and see where we have now required compatibility, that doesn't mean a tougher standard, once this policy goes into effect.

I think my colleagues, I'm sure, would like to add to the answer to your question about where are we going.

COMMISSIONER ROGERS: Quite frankly, I wouldn't. But I would like to ask a question. That is, have you considered the resource implications of going from a certain number of general licenses to specific licensees? How much do you think of a financial impediment is there to doing

that within the agreement states? Because it may mean that you will have to take on some more -- if you really want to do that job, because we were identified that these are special situations, isn't that going to perhaps pose some additional resource requirements on you?

MR. RATLIFF: It does, but it partially balances out because now we spend a lot of time at locations where there's been contamination because of sources or sources have been found. So, we spend a lot of staff effort and sometimes maybe even on one incident three staff persons' time for several months. So, balancing that out with the initial start-up of doing a regulatory program over the general license gauges was something we just had to bite the bullet. We did that. Now that the program is in place, it works pretty smoothly. It's all computerized. There's not much of a problem except still trying to trace down the return mail where this person -- even in the county there's no record of this company ever existing. Those are the problems which I think is an important part because we need to know what happened to those sources so they don't show up over here.

COMMISSIONER ROGERS: All right. Fine.

MR. RATLIFF: But it's costing us more though. It costs us more, but I think in the long run it's worth it.

COMMISSIONER ROGERS: I think that is a

consideration, what the resource implications are for making that change.

No, I didn't want to contribute to a prediction of the future at this point. But I did want to thank you very much for I thought an excellent presentation. Very helpful, very complete.

CHAIRMAN SELIN: Commissioner?

COMMISSIONER de PLANQUE: I just wanted to go back to the problem of early input on our regulations or policies or whatever. I think we've made some progress in that our General Counsel has looked at the FACA rules and what we can and cannot do under them. Are you happy with the implementation of what we now know? Does more have to be done to facilitate better and easier early input on things? We know what we can and cannot do now.

MR. RATLIFF: Right, and I think time is going to tell. At least looking at the options, that you've taken option 5 and 6 that the staff provided where under 274 it is a required program and we're able to be co-regulators there and then the option 6, I guess the fact that the OAS really could become a committee that could be legally set up causes the harder problem because the Organization of Agreement States is not a chartered organization with any bylaws. It's just the 29 states who are together.

So, the option 6 would be harder to implement, but

it's not impossible. The option 5 works real well, which was looking at the way EPA's been doing business. In our states we work side by side many times with our hazardous waste people who work almost weekly. One of our staff people comes up to Washington once a week and is on a task force with EPA as a member of the task force and EPA's interpretation, which you're following, I think is defendable.

COMMISSIONER de PLANQUE: Okay. Do we or you have to do anything more administratively at this point to make this play out the way you would like or is everything okay?

DR. KULIKOWSKI: I mean the FACA decision is relatively new, but I think the first thing when Chip Cameron talked about it at the agreement state meeting, I think there was sort of a collective sigh of relief on both sides that now we can sort of talk to each other without going to who has to be present in the room and how many week's notice do we have to give if someone wants to discuss a problem? I think that impediment has been erased and I think probably of all the accomplishments that we collectively have achieved this year, I think that's probably the most significant and I think it will do much to resolve some of the issues that were raised in the letter that I sent to --

COMMISSIONER de PLANQUE: So you think henceforth

this will now take care of itself?

DR. KULIKOWSKI: Yes. It may need some tweaking and stuff like this, but I think by and large the hill has been taken.

I'd like to just make one more comment sort of about what we were talking about, fees and the GL devices. I think in New York City we're supposed to 100 percent fee recovered. That doesn't work because we have some fee-exempt places that are of the city agencies. Also, all of our emergency response is, as I think rightfully should be, taxpayer supported. That I think also relates to the situation in Texas. Even though there may be a net increase in the cost to go to a more stringent type of regulation from the GLs to -- or at least registered GLs and keeping track of them in a more rigorous way, it's shifting the financial burden from the taxpayer which really shouldn't have to bear that to the principal responsible parties, the regulator and the regulatee.

So, even though it may cost more, it's costing the appropriate entities a little bit more. I don't know how significant the difference is, but that's one of the philosophies that the city has had for quite some time, is that the public health and safety aspects of our program, which if we go out to recover a source that's been tossed in the street or, as we were doing this week, getting stuff

sent back from Connecticut in ordinary trash, it's part of the taxpayers' right to have us go out and do that to protect their public health and safety.

CHAIRMAN SELIN: We didn't tell you about option 7 of that paper which was deputize all agreement state folks as federal marshals.

MR. RATLIFF: In fact, we have some regulatory programs in our states where the people are actually peace officers and they really need to be because they're dealing with food and drug and it's the drug part of the program that causes problems.

CHAIRMAN SELIN: I think we cut you off, didn't we?

MR. RATLIFF: Yes. You know, you kind of addressed the future impact on training courses and I think it's kind of unclear. But the training courses are excellent. I think one thing that I can say over all the years, even coming out of school with a master's in Health Physics and Electrical Engineering, all the training courses prepare you for specific areas. It really does benefit our people. On the other hand, I think we really do try in the states to help NRC. We in Texas developed the well-logging rules from scratch, the radiography certification. There's gamma knife rules being produced by other agencies. So, we do try to sort of pitch in where we can. I think that's why

our whole program and our agreements were really helping each other to make sure that the overall impact is there.

So, I think when you get the complaint a lot of times that the states' licensees are getting off free, they're not because we charge every one of them 100 percent of our cost.

CHAIRMAN SELIN: You notice I didn't say anything even remotely like that.

MR. RATLIFF: Right. Exactly. Exactly. But I say when you get that criticism. It's the people that will come from some of the non-agreement states. I can see their fees are high. We know because our number of licensees has increased. We have a lot of licensees that have moved to Texas not only because it's a beautiful, wonderful area, but the fees are cheaper. But you can't move universities and hospitals very easily and I can see that that's a dilemma.

We're facing the same thing with our legislature to be realistic. Maybe that's an unrealistic request to ask the legislature. But if you have that base public health funding so that you can do things, when you get complaints that are not even related to agreement material, just the time you have to refer them to the appropriate state agency, that's time that costs NRC and I think that's got to be recognized by the state legislators and the federal Congress, that you need some funds if you expect the

programs to work efficiently.

CHAIRMAN SELIN: Well, we don't have any -- I mean we're a hundred percent fee recovery agency.

MR. RATLIFF: That's the way we're based in Texas.

CHAIRMAN SELIN: That means that if there's anything that somebody doesn't pay, then somebody else has to pay for that.

MR. RATLIFF: That's the problem we have now. Our dentists complain primarily in Texas because we have to take a lot of complaint calls on electromagnetic fields, lasers, microwaves, radon, things that are really public areas but they're paying for them. If we can help in any way through our legislative ways to really get the word that NRC really should have a base amount that's really for overall mission of protection of public health and safety in the radiation area, I think we'd be more than willing to work with that.

And it comes back to the --

CHAIRMAN SELIN: I wouldn't ask you to lobby on our behalf, but I would point out that Texas has an extraordinarily powerful delegation in the House.

MR. RATLIFF: Right, right. And they've been real easy to work with. In fact, on the next issue, when we were faced with cutting the reactor monitoring contracts, it surprised me how many of the senators and representatives specifically called our Commissioner of Health, Doctor

Smith, and myself just to ask what's the problem, because they really feel that if any area is important it's the monitoring around the reactors. With the Ohio incident where you had built up cobalt-60, you can see what happens. Many states we've monitored for years. We really feel that relying on the licensee's data is risky at best and sometimes we've gotten stung real bad.

So, we in Texas and other states have multiple programs where we monitor around facilities and charge. Since the reactors are NRC licensee, they're there, we still have the responsibility in Texas for protecting public health, as does Bob and Tom in their respective states and jurisdictions and we really feel that that additional monitoring not only helps assure compliance there but if we ever get it to an emergency response mode where we really do have to implement stuff, the programs are in place.

We would encourage NRC -- and hopefully this is an area where Congress could give you more latitude increasing funds because the nuclear utilities in Texas both said they like having third party inspections. They like us doing samples.

CHAIRMAN SELIN: Well, our position is sort of a neutral position. We could claim preemption and make it difficult. Not so much for the off-site, but in Illinois we have --

MR. RATLIFF: Right.

CHAIRMAN SELIN: We don't. We basically say if the states want to be there, that's fine. But we don't think it's necessary and do not wish to put up resources to support that. Turn it around the other way. We can't depend on the states' monitoring. We need to do what we think has to be done for public health and safety and therefore we're in a position to having to say that our program is satisfactory with or without the states monitoring. Should the states wish to monitor for their own purposes, we encourage and support it, but don't contribute to it.

We wouldn't support legislation that would change it, that would in effect undercut our -- I mean it would be like admitting that we're not doing the job ourselves, that we're not doing our job ourselves.

MR. RATLIFF: But even the best facilities can have problems that they don't even find. That's why we're feeling that that extra security in that reactor has been taught defense in depth. But if the fence line is where the defense in depth stops, you could run into problems overall. I think that that monitoring has really been a benefit over time. I know --

CHAIRMAN SELIN: We've slowed down the -- you know, we didn't cut that off immediately, but in the long

run you're going to have to expect that we're not going to support --

MR. RATLIFF: Yes. That's what our congressional delegates are real interested in, that when it comes for publication in the Federal Register they want our input directly to their offices timely because of the word we've been given. So, I think that that issue wouldn't be resolved at that point.

CHAIRMAN SELIN: Okay.

MR. RATLIFF: Other than that, the cost recovery you've addressed. That's good. That's good news because I think we all try to put in part of it. I wish on the reactor monitoring we could. It's just that over the years you've got the states used to it, it's helped our laboratories. Some programs that small contracts that are usually less then 30 to 50,000, some states depend on for part of their laboratory services that support their agreement programs. So, that's an issue that overall I hope we can resolve and help each other out.

CHAIRMAN SELIN: In the long run, if the states want to do this, they're going to have to pay for it. But we shouldn't have done it so abruptly as we did. Obviously if the Congress instructs us to do otherwise, we will, but we don't think it's fair. We don't think the costs -- they're very small and we don't think they're called for and

over time we consider these to be costs that the states incur for good reason, but for their reasons not for ours.

MR. RATLIFF: Yes. I think that's an area you'll see that we'll continue to disagree on, but in our democratic system we have that option.

COMMISSIONER de PLANQUE: Just for clarity, what's your understanding of the status of that right now?

MR. RATLIFF: The contract has been extended to October, we've been told. We've not received an official new contract yet in I don't think any of the states. We've been told that it's going to be extended. The problem was initially that we were going to lay off people who were on those with one month's notice, which just wasn't good. But in the future there would be consideration to continue on the thermal luminescent dosimeter monitoring around the facilities but not the soil, vegetation, air, fish, other sampling. That would no longer continue.

So, the contracts would basically be cut by 80 percent, is about what I would guesstimate.

CHAIRMAN SELIN: Fair enough.

MR. RATLIFF: And the final thing I had here, and I think it's getting better, is the coordination between all the federal agencies with the Food and Drug, with the medical device review and the EPA on setting standards and hoping that we can all work together to really -- like I

said, I think the bottom line is we have to, as regulators, try to protect public health and safety with the resources available and I thank you for your time.

CHAIRMAN SELIN: Well, thank you very much. I would like to join my colleagues in thanking you, but I'd like to make a couple of specific comments.

First of all, we've expended an enormous amount of time, effort and political capital to work with other federal regulators in order to present the coordinated face to the licensees and to the states. Not only is it a lot of time and effort, but sometimes we've agreed to things that we don't really believe in on the grounds that that's better than having two sets of regulators, each of whom feels perfectly satisfied in his view, which is inconsistent with the other one.

So, I would think that we, quite frankly, would be more subject to criticism for getting a little bit away from our view of what ought to be regulation in order to come to some kind of an arrangement and not have the licensees in the states get caught between the two, although maybe I'm wrong about that. When we talk in April, I'd be interested in your views on that.

MR. RATLIFF: Fine.

CHAIRMAN SELIN: More generally, I want to make it clear that we just don't think that the relationship we had

three years ago was a stable relationship. It was very important to build the kind of relationship, but it just couldn't continue that way. It was too informal. It was all carrot. It wasn't even stick. There wasn't evaluation and we felt that it was necessary to put some more rigor and some more discipline and just some more up front understanding of what we can do, we can't do, what the states can do. I know it was painful and came without proper notification. It looked like we were reacting to Congressman Synar, but it really wasn't. We were reacting to the arguments that he raised. I just felt that a lot of them were correct. We're continuing without having Congressman Synar there to keep hammering on us. That's not really why it came up.

We see that the policy, the adequacy and compatibility statements are really large intellectual steps forward. I mean compatibility isn't just more adequacy, it's different and we see that there are teeth in there that say there are things the NRC can't do. If it doesn't look that way to you, you need to tell us that because these are not intended to just beat up on the states. They really are to make more explicit what's expected, to do it through a process that's not in the dark of night but it subject to public comment and public review.

So, I do believe that this enormous amount of

suspicion and sort of feeling that somehow we're trying to do something that you're not going to like that I felt two years ago has evaded, but there really wasn't any ill will behind that or necessity to put the states in the place. It was just the time to go from an entrepreneurial stage to consolidate to a managerial stage and that's all that we're trying to do.

I really personally appreciate the sentiments that you brought up this morning. We'll keep trying and I think we're starting to make some progress on both the substance and the communication. But there never was any sort of ill will or changing the balance or anything behind any of these points to begin with.

MR. RATLIFF: The Office of State Programs is probably as effective as I've ever seen it in the 24 years I've been with the regulatory program. It really helps and I think having guidance that we can all know up front these are the rules will be helpful. It's just the painful part will be deciding what are the rules.

CHAIRMAN SELIN: Yes.

MR. RATLIFF: But I think there's no question that that will be valuable to us as well as you to have those things set out. If Congress would have defined adequacy and compatibility, it may not have had -- we still may have been arguing, but at least this way if we can agree on something,

it will help --

CHAIRMAN SELIN: Asking Congress to define adequacy and compatibility is like having the citizens of Grenada invite the vandals in to settle their argument with the citizens of Seville. We don't really need their help on this issue.

MR. RATLIFF: Right.

CHAIRMAN SELIN: We can handle that ourselves.

But this sketch of the future I think will have a real impact on the states because if, in fact, we are able to cull out from our regulations those that don't have much payoff and make those that are remaining more performance oriented and less prescriptive, it will take awhile but that will have an enormous impact on what we ask the states to do.

So, I think that you have as much of a stake as the NRC does --

MR. RATLIFF: Oh, I agree.

CHAIRMAN SELIN: -- in the future of the materials program of the type that I tried to describe.

Thank you very, very much. This has been a most constructive and, for us, informative session.

MR. RATLIFF: And we'd really welcome -- when we have the manager's workshop, I think it's going to be in April, to meet with you and go through that because we do

plan to have that in the Washington area.

CHAIRMAN SELIN: I'd propose to address you and then meet with you afterwards, provided that I'm not out of the country. It's very close to the time I'm supposed to leave on a trip.

MR. RATLIFF: Okay. That would be great.

CHAIRMAN SELIN: Thank you very much.

MR. RATLIFF: Thank you.

DR. KULIKOWSKI: Thank you very much.

[Whereupon, at 11:29 a.m., the meeting was concluded.]

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING BY ORGANIZATION OF AGREEMENT STATES - PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Wednesday, February 1, 1995

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Carol Lynch

Reporter: Peter Lynch

AGREEMENT STATES ISSUES

Commission Briefing
February 1, 1995

Richard A. Ratliff, P.E., Chairperson
Robert R. Kulikowski, Ph.D., Past-Chairperson
Terry Strong, Chairperson-Elect
Thomas Hill, Secretary

ORGANIZATION OF AGREEMENT STATES

BRIEFING TOPICS

- *Introductory Remarks*
- *Status of Agreement States*
- *Sealed Source and Device Reviews*
- *Generally Licensed Devices*
- *Quality Management Program*
- *Data Collection Progress*
- *Future of Regulatory Programs*

STATUS OF AGREEMENT STATES

- *Independent co-regulators*
- *States' comments on rules should be given greater weight*
- *Regulate all sources of radiation*
- *States are strongly opposed to codification of Agreement State requirements*
- *IMPEP Pilot Program evaluation*

SEALED SOURCE AND DEVICE REVIEWS

- *Major concern and interest to the Agreement States*
- *Postponement of workshop*
- *Concern that the States' reviews of Sealed Sources and Devices now being questioned by NRC staff*
- *More NRC-State interaction is warranted*
- *Need standards for minimal review and requirements for independent device testing*

GENERALLY LICENSED DEVICES

- *Curie quantity sources of CS-137 in GL Devices*
- *Both States and NRC studies indicate lack of accountability*
- *Many sources and devices have been abandoned or lost by General Licensees*
- *Some sources detected at scrap metal yards and steel smelters*
- *Multiple occurrences of sources being smelted, resulting in mixed wastes*
- *NRC needs to re-evaluate certain GL's and possibly require specific licensing*

MEDICAL QUALITY MANAGEMENT RULE

- ***Should not be required of States until final NAS review complete***
- ***States have considerable experience and interest***
- ***Risk vs. Benefit***
  - > ***Evaluation***
  - > ***Development and implementation of changes***
- ***Many states have more stringent misadministration requirements***

DATA COLLECTION
REPORTING REQUIREMENTS AND REQUESTS

- *Must be uniform and reliable*
- *Development of data sets must be by consensus of States and NRC*
- *NRC incident data base*
- *National data base for all sources of radiation*