



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 12, 1997

MEMORANDUM TO: Adequacy and Compatibility Working Group (WG):

Aubrey Godwin, AZ
Roland Fletcher, MD
John Telford, RES
Hampton Newsome, OGC
Richard Woodruff, RII

FROM:

Cardella Maupin
Cardella Maupin, Co-Chair

SUBJECT:

FOLLOW-UP ON COMPATIBILITY AND
THE WRONGDOING RULE

In a memorandum dated April 18, 1997, it was requested that you provide your views on the matter of the compatibility category on the wrongdoing rule and associated wrongdoing procedures by April 25, 1997. It was also requested that you provide your views on the issue of whether Agreement States should have conflict of interest requirements.

We have received responses from all WG members. Copies of responses on the issue from WG members are attached; one WG member responded by telephone. The responses indicate that two WG members support Option 2. One member supports Option 1 as his first choice and would support Option 3 as a second choice. Three WG members would support Option 3. Mr. Lohaus, resource person to the WG, would support Option 3.

These responses indicate that the majority of the WG members would support Option 3, change the categorization for the wrongdoing requirements to Compatibility Category C and, consistent with the categorization for 10 CFR 40.10, retain the current C categorization for procedures for investigation of wrongdoing. In view of the above responses, we will include the following draft paragraph in the staff's paper being developed on the issues of wrongdoing and conflict of interest.

"The Adequacy and Compatibility Working Group in its 'Supplemental Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,' dated January 29, 1997, provided that requirements dealing with wrongdoing in 10 CFR 30.10 and 70.10 be designated as a Compatibility Category D, not a matter of compatibility, and wrongdoing procedures be designated as a Compatibility Category C (10 CFR 40.10, which was inadvertently categorized as a Category C, would also be a Category D). The Working Group concluded that each State should have flexibility to determine the level or definition of

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wrongdoing which they might reflect in their implementing procedures based on how wrongdoing is defined and handled in individual State statutes. The Working Group concluded, however, that each State should have procedures in place for addressing licensee wrongdoing given its potential transboundary significance and potential gap that might be created between the NRC and Agreement State Programs, if deliberate misconduct and wrongdoing issues involving Agreement State licensees were not pursued and closed. For example, an Agreement State licensee who is determined to have carried out activities involving misconduct in an Agreement State's jurisdiction if not properly handled, could potentially carry out the same activities in NRC or another Agreement State's jurisdiction under reciprocity.

Staff requested re-evaluation of the compatibility category of 10 CFR 30.10, 40.10, and 70.10 by the Working Group. The majority of the Working Group members would support changing the designation for the wrongdoing requirements to a Compatibility Category C, and retaining wrongdoing procedures as a Compatibility Category C. The staff agrees with the suggested revision to the wrongdoing requirements compatibility categorization.

Given the concept of legally binding requirements (LBRs), the State could address this area either in statutes, regulations, or another form of LBR. Therefore, identifying that States need to adopt the essential objectives of the NRC's wrongdoing requirements would assure that each State had established a LBR providing a basis for the implementing procedures. In addition, requiring Agreement States to adopt compatible rules or LBRs would provide greater assurance that States adequately address this area and would help assure greater consistency in the nationwide program for the regulation of Agreement materials."

In addition, only two WG members responded to whether conflict of interest requirements should be made a matter of compatibility. I have received one abstention in terms of votes. I would still like to hear from the remaining members of the WG on this issue.

Attachments:
As stated

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Received 6/12/97
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State statutes. The Working Group concluded, however, that each State should have procedures in place for addressing licensee wrongdoing given its potential transboundary significance and potential gap that might be created between the NRC and Agreement State Programs, if deliberate misconduct and wrongdoing issues involving Agreement State licensees were not pursued and closed. For example, an Agreement State licensee who is determined to have carried out activities involving misconduct in an Agreement State jurisdiction if not properly handled, could potentially carry out the same activities in NRC or another Agreement's jurisdiction under reciprocity.

Given the potential significance of this area, staff disagrees with the Working Group and believes that the requirements set out in 10 CFR 19.20, 30.10, 40.10, and 70.10 should be adopted by the Agreement States as a matter of compatibility (i.e., both the wrongdoing requirements and implementing procedures should be designated as a Compatibility Category C.) Staff believes this is not a significant change from that recommended by the Working Group.

Under the approach suggested by the Working Group, the details of State legislation would need to be examined during IMPEP reviews to assure that the State had adequate authority to implement wrongdoing procedures, which are required for compatibility. (Staff does not believe a State could adopt and implement compatible procedures to investigate wrongdoing without having a supporting statutory requirement in place.)

Given the new concept of legally binding requirements (LBR's), the State could address this area either in statutes, regulations, or another form of LBR. Therefore, identifying that States need to adopt the essential objectives of the NRC wrongdoing requirements would assure that each State had established a LBR providing a basis for the implementing procedures. Finally, requiring that Agreement States adopt compatible rules would provide greater assurance that States adequately address this area and would help assure greater consistency in the nationwide program for the regulation of Agreement materials."

Please provide me with your comments on the paragraph above by c.o.b. May 9, 1997.

In addition, only one WG member responded to whether conflict of interest requirements should be made a matter of compatibility. I have received one abstention in terms of votes. I would still like to here from the remaining members of the WG on this issue.

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