

NOTATION VOTE

RESPONSE SHEET

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: SECY-97-054 - FINAL RECOMMENDATIONS ON
POLICY STATEMENTS AND IMPLEMENTING
PROCEDURES FOR: "STATEMENT OF PRINCIPLES
AND POLICY FOR THE AGREEMENT STATE PROGRAM"
AND "POLICY STATEMENT ON ADEQUACY AND
COMPATIBILITY OF AGREEMENT STATE PROGRAMS"

Approved XX Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

Comments Attached

Greta Jay Davis
SIGNATURE

Release Vote / ☐ /

June 10, 1997
DATE

Withhold Vote / ☐ /

Entered on "AS" Yes X No _____

Commissioner Dicus' comments on SECY-97-054:

I approve the final "Statement of Principles and Policies for the Agreement State Program", final "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the accompanying implementing procedures.

These documents represent the most comprehensive examination of the Commission's Agreement State program since the passage of Section 274 of the Atomic Energy Act. There is now in place a logical, well defined system for implementing the adequacy and compatibility requirements that Congress imposed upon the Agreement State program. Staff and Agreement State personnel who have been involved in the production of these documents are to be congratulated.

Notwithstanding their overall excellence I believe that the following changes to the Policy Statements and procedures and follow-up actions are needed:

1. The "NRC" compatibility category identifies regulations that are reserved to the NRC but allows the States to adopt them for clarity. An example of this would be definitions such as "Production facility" in 10 CFR 50.2. While I have no disagreement with this provision, the policy omits an essential concept in the present category "4", viz. there are certain NRC regulations that Agreement States may not adopt because the areas to which they apply are reserved to the NRC, e.g., the remainder of Part 50. More to the point, a State that adopts such reserved regulations cannot be found to be compatible. The Policy and procedure should be revised to reflect this. The regulations in the "NRC" category that States may adopt for clarity should be specifically identified. The two subcategories should be separately identified, e.g., "NRC" for the NRC reserved regulations that States may adopt for clarity and "NRC-X" (or some similar designation) for the others that are reserved to the NRC. The flow chart should also be revised to reflect same.

On this point, I note that the requirements of 10 CFR 70.21 (a)(1), (a)(2), (a)(3), (b) and (d) were upgraded from category 4 under the present system to category C. Section 70.21 provides filing requirements for applicants for licenses for possession and use of SNM in a plutonium processing or fuel fabrication plant or for a uranium enrichment facility. Because the quantities of SNM in these facilities are in excess of formula quantities, licensing and regulation of these plants is by the NRC. Accordingly, these sections should be designated as exclusively reserved to the NRC. Thus, these regulations should be classified as "NRC-X" using the modification described above.

Lastly, the flow chart should be annotated to clearly state that regulations required for health and safety are in compatibility categories A, B and C as well as in the H&S category. The H&S category captures those not also required for compatibility.

2. Of the over 1,000 regulatory requirements in 10 CFR that were reviewed for the appropriate compatibility category under the revised

Policy Statement, less than 100 were "upgraded." Most of these involved regulations that States were not previously required to adopt (category "3" under the present system) which are now in category A, B, or C. The others are regulations which States were required to adopt but essentially identical language was not required (category 2) and are now classified in categories A or B. The implication of these "upgrades" for the Agreement States is that, to maintain compatibility, they will need to take action (such as rulemaking or conditioning licenses) for regulations which fall into a higher compatibility category. This should be clearly spelled out in a letter to the Agreement States. In particular, the letter should specifically identify the regulations that were "upgraded," the potential impact upon a finding of compatibility, and the date that State action is to be taken. Staff should also develop a plan to monitor and review State actions including the review of draft State regulations. The Commission should be informed of any unexpected or significant problems that develop.

3. Staff stated that they are reviewing the question of whether existing agreements with the States will need to be amended after the proposed policy is approved. Given the increasing constraints upon resources in the NRC and the Agreement States and unless there is a truly compelling legal or policy need to amend the agreements, we should strive to preserve NRC and State resources for other activities that more directly benefit the public health and safety and avoid such work. Staff should work towards a goal of not requiring amendments of existing agreements. The standard agreement should be written so as to enable existing agreements to remain valid. If modification of the Policy Statements will be needed, the Commission should be promptly informed.

4. According to staff only 19 Agreement States (as of the date of the paper) had adopted a QM rule. Because of uncertainty about the compatibility status of the NRC's QM rule, staff have not reviewed or made compatibility determinations for State QM rules or draft rules. The Commission, in its decision on DSI 7, Materials/Medical Oversight (COMSECY-96-057) directed the staff to re-evaluate the Quality Management (QM) Program and re-focus its requirements on those that are essential for patient safety and make them risk-informed to the extent possible. The SRM specified a due date for the staff's program to complete rulemaking on this and other actions in the medical area of June 30, 1999. Under the staff's recommendation regarding the QM rule (last paragraph on p. 9 of the paper), all Agreement States would have to have adopted the requirements of 10 CFR 35.32 (a), (b) and (c) within 3 years of the effective date of the adequacy and compatibility policy, or by 2000.

Given these conflicting dates, I am reluctant to agree with the staff's recommendation to fully implement the adequacy and compatibility procedure with respect to the NRC QM rule in its present form. I would prefer that staff, consistent with the SRM on DSI 7, identify to the Commission what requirements in the QM rule are essential for patient safety. I recommend that the States that have not yet adopted the QM rule be advised that they must impose these requirements by rule.

license condition or other appropriate, enforceable measure as soon as possible and until such time as the Commission finalizes a revision of the QM rule.

5. In its decision on SECY-97-046A the Commission determined that the decommissioning rule should be compatibility category 2 under the present system. It is my understanding that staff believes that under the new policy the rule would be category C. The new Policy Statement states with respect to category A,

For purposes of this Policy Statement, this category includes "basic radiation protection standards" meaning dose limits, concentration and *release limits* (emphasis added) related to radiation protection in 10 CFR Part 20 that are generally applicable and the dose limits in 10 CFR 61.41²"

Footnote 2 states:

The Commission will implement this category consistent with its earlier decision in the LLW area to allow Agreement States flexibility to establish pre-closure operational release limit objectives, ALARA goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is at least equivalent to that afforded by Commission requirements.

In my vote on SECY-97-046A I expressed a preference for Category 1 under the present system and I believe that under the new policy it falls into category A. For the reasons that I cited in my vote on SECY-97-046A, I believe that Category A is the appropriate category and invite my fellow Commissioners to revisit the question under this new policy particularly in light of the footnote relative to 10 CFR 61.41. If, however, a majority of the Commission is not persuaded that Category A is the appropriate category, I strongly recommend that, for clarity, a footnote be added to this Policy Statement noting the Commission's previous determination of the compatibility for the decommissioning rule dictates a category C compatibility under the new policy statement.

6. The IMPEP program will have a key role in the successful implementation of the new Policy Statement on Adequacy and Compatibility. IMPEP reviews, however, are usually scheduled at two year intervals and the times between reviews may be extended to longer intervals for good cause. Nonetheless, staff should be in frequent contact with each of the Agreement States to assure that the programs are not adversely affected by changes in staffing, funding, etc. In the next 3 years, staff must also be positioned so that it can review and comment in a timely manner on draft revisions to State regulations that are intended to meet the new Policy Statement while completing its review of previously submitted State regulation revisions that were made to conform them to the 1992 revision of Part 20. Thus, the next few years will be a demanding one for NRC staff responsible for the Agreement State program. Staff should submit a paper to the Commission

outlining how it plans to meet the challenges posed by the new Policy Statement. In particular, the paper should address the need to maintain frequent contact with the individual Agreement States to assess their program status and the evaluation criteria that will be used for this purpose and the staff's plans for review of draft State regulations as well as closing out the reviews of revisions of State regulations for compatibility with Part 20. The paper should also address the resource requirements in HQ and in the field that will be needed to meet these challenges.