

June 4, 2009

SUMMARY OF COMMENTS ON SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements"

I. Sent to the Agreement States for Comment: January 29, 2009 (FSME-09-002)

Comments/Dated: Organization of Agreement States (OAS) - 03/18/09 (e-mail received)

Organization of Agreement States (OAS)

Comment 1:

The OAS Board supports the addition of the Standing Committee on Compatibility (SCC) to the list of relevant offices whose concurrence is required for a Compatibility Resolution. This gives the States a voice in the resolution and allows OAS and CRCPD an opportunity for input.

Response:

We appreciate the comment; however this was an error in the draft procedure SA-200. The SCC is a [Management Directive \(MD\) 5.3](#) Working Group and as such cannot concur on NRC documents. The procedure has been revised to correct this error, and will state that "The CR document will be reviewed by the Standing Committee on Compatibility for consistence with MD 5.9 (see charter: ML082610634), and will require concurrence by all relevant NRC offices."

Comment 2:

The inclusion and update of the Compatibility Resolution Documents from past years and the changes resulting from the recent NRC reorganization help to clarify points of contact and brings together documents developed and referenced in rulemaking.

Response:

We appreciate the comment, however no change to the procedure is necessary based on this comment.

II. Sent to the NRC Offices for Comment: January 29, 2009

Comments/Dated: Region III – 03/03/09 (e-mail)
OGC – 02/24/09 (email)
NMSS – 02/23/09 (email-mark-up)

Region III:

Comment 1:

Section IV.B. and C.: These paragraphs refer to the "State Regulation Review Coordinator" and the "lead Project Manager." It is unclear if these positions are the same individual, or if not, how they relate to each other. The lead Project Manager is mentioned later in the procedure but the State Regulation Review Coordinator is not.

Response:

We agree with this comment. The procedure was revised to remove all references to the lead Project Manager and to replace those references with "State Regulation Review Coordinator (SRRC).

Comment 2:

Section V.B.1.h: In the last sentence of this paragraph, change the word “need” to “needed”

Response:

We agree with this comment. The procedure will be revised accordingly.

Comment 3:

Section V.D.: The first paragraph of this section refers to compatibility decisions made by the Joint NRC/Agreement State Working Group in 1997, but uses an active voice referring to future revisions of compatibility designations where Commission approval does not appear to be required. We suggest that this paragraph be modified to indicate that these compatibility decisions will only be revised to make corrections, without going through the current Commission approval process.

Response:

We agree with this comment. The original language will be reinstated in Section V.D.

Comment 4:

Appendix A: The second “Comment” in the appendix incorrectly refers to “Appendix A” rather than the FSME website. The “Comment” for uranium recovery program event reporting should be modified as follows: Change “...can serve as a basis alone **or** a finding of...” to “...can serve as a basis alone **for** a finding of...”

Response:

We agree with this comment. The procedure will be revised accordingly.

Comment 5:

Appendix B: Add an ADAMS accession number for the first compatibility resolution document.

Response:

We agree with this comment. The procedure will be revised accordingly.

Office of the General Counsel (OGC):

Comment 1:

The phrase “is in keeping with” is too vague and needs to be changed to “significantly inconsistent” in Section V. B. g. and h., on pages 7 and 8 of the revised SA-200.

g. The “Significant Yes/No” column will be used by NRC staff during a review of Agreement State regulations when the “Different Yes/No” column contains a Yes. The staff will indicate if the difference found in the Agreement State regulation is significantly inconsistent with the Compatibility Category assigned to the regulation.

h. The “If Difference Why and Why Not was a Comment Generated” column will state what the difference is and explain why the difference is significantly inconsistent with the regulation’s Compatibility category. If the difference makes the regulation non-Compatible, NRC staff will also list what regulatory changes the State needs to make to become compatible with NRC regulatory requirements.

Response:

We agree with this comment, that the phrase “in keeping with” is too vague, however we disagree with using the phrase “significantly inconsistent” in its place. We believe that the phrase “significantly inconsistent” portrays the wrong message with regards to these two paragraphs and gives an opposite meaning to what was intended. We will replace the phrase “in keeping with” with the phrase “in accordance with”.

Comment 2:

The original section V.D.1. needs to be added back in because not all approvals for designations of final regulations developed after September 3, 1997 need Commission approval. The original V.D.1. is an accurate statement. The revised section V.D.2. needs to delete the phrase “designations and” before the word “revisions” in the first line.

Response:

We agree with this comment. The original language will be reinstated in Section V.D.

Comment 3:

The following are editorial comments which make the document easier to understand because the regulation tables that are being discussed in the document are no longer attached, but referred to in a web-link. I would recommend putting quotes around the title of the columns. I would also recommend putting an Appendix in that shows one page of a regulation table that can be used as an example so the document can stand on its own. Otherwise, the reader has to go to the web to find a table to understand what the columns are that the guidance document is talking about.

Response:

We agree with part of this comment. We will be putting quotes around the titles of the columns; however we will not be adding an appendix of an example page of a regulation table. We feel that the users of this document are very familiar with these tables and that this addition would be adding an unnecessary appendix to this procedure. The procedure was revised accordingly.

Office of Nuclear Material Safety and Safeguards (NMSS)Comment 1:

NMSS provides 3 edits to the procedure.

Response:

We agreed with some of the edits, and the procedure was revised accordingly to the agency's editorial style and consistent with the FSME procedures.

Comment 2:

In Section V.B.1.d.i Foot note 5 below indicates that items under listed as H&S are required for adoption as opposed to “should be” adopted. Consider clarifying this discrepancy.

Response:

We agree with this comment. The procedure was revised accordingly.