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September 5, 2017

Kathy Dolce Modes  
Office of Nuclear Materials Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

RE: OPPORTUNITY TO COMMENT ON DRAFT REVISION TO OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS PROCEDURES MANAGEMENT DIRECTIVE 5.9 "ADEQUACY AND COMPATIBILITY OF PROGRAM ELEMENTS FOR AGREEMENT STATE PROGRAMS" (RCPD-17-009)

Dear Ms. Modes:

The Organization of Agreement States (OAS) Executive Board (Board) reviewed the above document and respectfully submits the following comments.

1. The Board agrees with the States of Alabama, Arkansas and Colorado and reiterates the concerns of the OAS letters dated September 24, 2014 and August 16, 2016. Specifically, that the development of the revisions to the Policy Statement on Adequacy and Compatibility of Agreement State Programs (the Policy Statement) and Management Directive 5.9 (MD 5.9) did not include representation from the Agreement States. The fact that these documents define the relationship between the NRC and the Agreement States lends more credence to the perception that the NRC does not consider the Agreement States as regulatory partners.
2. The Board also agrees with the States of Alabama, Arkansas and Colorado in their objection to the terms "must", "shall" and "legally binding requirement". The Policy Statement specifically says that the Policy Statement does not itself impose legally binding requirements on the Agreement States, so including these terms in the body of the document is contradictory. This comment does not refer to the use of the term legally binding in the context of Agreement State regulations and license conditions as they apply to licensees.
3. There continues to be confusion regarding the definition of Compatibility Category B and what constitutes cross jurisdictional boundaries. Given the definition of cross jurisdictional in the Glossary, the Board agrees with the State of Alabama in that almost every licensed activity could be considered cross jurisdictional.

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*Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin*

4. The Board also agrees with the State of Colorado to limit Category B designations to those activities that have significant impact. Rule-makers should only designate Category B when not doing so could create immediate health, safety or security concerns in other jurisdictions, not based on non-compliances created and not based on convenience to licensees.
5. The Board recommends that the NRC add examples of rulings necessitating Category B so that future decisions regarding compatibility are more consistent and conservative.
6. The Board requests extending the timeframe for adoption of regulations to four (4) years. The Agreement States' processes for rulemaking can be extremely burdensome and three (3) years does not provide sufficient time to satisfy all states' rulemaking requirements. In addition, States have to compete for rule priorities with other programs such as Air, Drinking Water, and Solid and Hazardous Waste. It is usually out of the Agreement States' control when rule priorities are assigned within that state.

We appreciate the chance to comment on this subject, and stand ready to answer any questions you may have.

Sincerely,



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