

NUCLEAR REGULATORY COMMISSION

[NRC-2019-0114]

**State of Vermont: NRC Staff Assessment of a Proposed Agreement
Between the Nuclear Regulatory Commission and the State of Vermont**

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed state agreement; request for comment.

SUMMARY: By letter dated April 11, 2019, Governor Philip Scott of the State of Vermont requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Vermont as authorized by the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Vermont would assume, regulatory authority over certain types of byproduct materials as defined in the AEA, source material, and special nuclear material in quantities not sufficient to form a critical mass.

As required by the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Vermont's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft staff assessment.

DATES: Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by the following method:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2019-0114**. Address questions about NRC dockets in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals listed in the

FOR FURTHER INFORMATION CONTACT section of this document.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Duncan White, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-2598, e-mail: Duncan.White@nrc.gov of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **NRC-2019-0114** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2019-0114**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room

(PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by e-mail to hdr.resource@nrc.gov. The final application for an AEA Section 274 Agreement from the State of Vermont, the draft assessment of the proposed Vermont program, and additional related correspondence between the NRC and the State for the regulation of agreement materials are available in ADAMS under Accession Nos. ML19107A432, ML19114A092, ML19115A214, ML19102A130 and ML19113A279.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2019-0114** in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information on Agreements entered under Section 274 of the AEA

Under the proposed Agreement, the NRC would discontinue its authority over 36 licenses and would transfer its authority over those licenses to the State of Vermont. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement (in Appendix A) be published in the *Federal Register* for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

III. Proposed Agreement with the State of Vermont

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume and the NRC to discontinue regulatory authority over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as “Agreement materials,” are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

(b) The proposed Agreement contains articles that:

- i) Specify the materials and activities over which authority is discontinued;
- ii) Specify the materials and activities over which the Commission will retain regulatory authority;
- iii) Continue the authority of the Commission to safeguard special nuclear material, protect restricted data, and protect common

defense and security;

- iv) Commit the State of Vermont and the NRC to exchange information as necessary to maintain coordinated and compatible programs;
- v) Provide for the reciprocal recognition of licenses;
- vi) Provide for the suspension or termination of the Agreement; and
- vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Vermont.

(c) The regulatory program is authorized by law under the Vermont Statute Act (VSA) §§ 1651 through 1657, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Vermont law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated April 11, 2019, Governor Scott certified that the State of Vermont has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Vermont for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Vermont licenses until the licenses expire or are replaced by State-issued licenses.

(d) Based on the draft staff assessment, the NRC staff finds that the Vermont Department of Health, Office of Radiological Health's Program is adequate to protect public health and safety and is compatible with the NRC's regulatory program for the

regulation of Agreement materials. However, it should be noted that NRC staff identified several sections of the final Vermont Radioactive Materials Regulations that were either not compatible or needed additional editorial changes. By letter dated May 10, 2019, the NRC staff described these compatibility and editorial issues, and requested that the Vermont Department of Health commit within 60 days to make the described regulatory changes as soon as practicable (ADAMS Accession No. ML19102A160).

Summary of the Draft NRC Staff Assessment of the State of Vermont's Program for the Regulation of Agreement Materials

The NRC staff has examined the State of Vermont's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," (46 FR 7540, January 23, 1981, as amended by Policy Statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA-700, "Processing an Agreement" (available at <http://scp.nrc.gov/procedures/sa700.pdf> and http://scp.nrc.gov/procedures/sa700_hb.pdf). The Policy Statement has 28 criteria that serve as the basis for the NRC staff's assessment of the State of Vermont's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. The NRC staff reviewed these areas under Criteria 1, 2, 20, and 24. The State of Vermont's proposed Agreement materials program for the regulation of radioactive materials is called the "Radioactive Materials Program." The Radioactive Materials Program will be located within the existing Office of Radiological Health of the Vermont Department of Health.

The educational requirements for the Radioactive Materials Program staff members are specified in the State of Vermont's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Master's Degree in either environmental science or radiologic and imaging sciences. All have training and work experience in radiation protection. Supervisory level staff have at least 20 years of working experience in radiation protection.

The State of Vermont performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Vermont's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Vermont will employ the equivalent of 1.25 full-time equivalent professional and technical staff to support the Radioactive Materials Program.

The State of Vermont has indicated that the Radioactive Materials Program has an adequate number of trained and qualified staff in place. The State of Vermont has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Radioactive Materials Program staff has accompanied the NRC staff on inspections of NRC licensees in Vermont and participated in licensing training at NRC's Region I with Division of Nuclear Materials Safety staff. The Radioactive Materials Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Vermont and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Radioactive Materials Program staff identified by the State of Vermont to participate in the Agreement materials program have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the

techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. The NRC staff reviewed these areas under Criteria 1-15, 17, 19, and 21–28 in the draft staff assessment. The Vermont Statutes VSA §§ 1651 through 1657 provide the authority to enter into the Agreement and establish the Vermont Department of Health as the lead agency for the State's Radioactive Materials Program. The Department has the requisite authority to promulgate regulations under Vermont Statute VSA §§ 1653(b)(1) for protection against radiation. The Vermont Statutes VSA §§ 1651 through 1657 also provide the Radioactive Materials Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Vermont Statute VSA §§ 1654 requires licensees to provide access to inspectors.

The NRC staff verified that the State of Vermont adopted by reference the relevant NRC regulations in parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Vermont Radioactive Materials Rule, Chapter 6, Subchapter 5. During its review, the NRC staff identified several sections of the final Vermont Radioactive Materials Regulations that are not compatible or need editorial changes. By letter dated May 10, 2019, the NRC staff described these compatibility and editorial issues, and requested that the Vermont Department of Health commit within 60 days to make the described regulatory changes as soon as practicable. The resolution of these comments does not interfere with NRC staff's processing of Vermont's Agreement State Application. Therefore, on the proposed effective date of the Agreement, the State of Vermont will have committed to adopting an adequate and compatible set of radiation protection regulations that apply to byproduct materials, source material and special nuclear material in quantities not sufficient to form a critical mass. The NRC staff also verified that the State of Vermont will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The NRC staff reviewed these areas under Criteria 8, 9a, and 11 in the draft staff assessment. The State of Vermont has adopted NRC compatible requirements for the handling and storage of radioactive material, including regulations equivalent to the applicable standards contained in 10 CFR parts 20, which address the general requirements for waste disposal, and part 61, which addresses waste classification and form, and both of which are applicable to all licensees covered under this proposed Agreement.

(d) Transportation of Radioactive Material. The NRC staff reviewed this area under Criteria 10 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. The NRC staff reviewed this area under Criteria 1 and 11 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. The NRC staff reviewed this area under Criteria 1, 7, 8, 9a, 13, 14, 15, 20, 23 and 25 in the draft staff assessment. The State of Vermont has adopted compatible regulations to the NRC regulations that specify the requirements to obtain a license to possess or use radioactive materials. The State of Vermont has also developed licensing procedures and adopted NRC licensing guides for specific uses of radioactive material for use by the program staff when evaluating license applications.

(g) Inspections and Enforcement. The NRC staff reviewed these areas under

Criteria 1, 16, 18, 19, and 23 in the draft staff assessment. The State of Vermont has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Vermont's Radioactive Materials Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Vermont has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The NRC staff reviewed this area under Criterion 23 in the draft staff assessment. The State of Vermont is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Vermont has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Vermont law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. The NRC staff reviewed this area under Criteria 25, 26, and 27 in the draft staff assessment. The State of Vermont law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all radioactive materials NRC licenses issued to facilities in the State of Vermont will be recognized as Vermont Department of Health licenses.

The State of Vermont also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Vermont regulations, in Vermont Radioactive Materials Rule Chapter 6, Subchapter 5, which adopts NRC regulations 10 CFR §§ 30.12, 40.11 and 70.11 by reference, provide exemptions from the State's requirements for the NRC and

the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Vermont to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Vermont to use their best efforts to accord such reciprocity. The State of Vermont would be able to recognize the licenses of other jurisdictions by general license.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Vermont Governor Scott, and the supporting information provided by the Radioactive Materials Program of the Vermont Department of Health. Based upon this review, the

NRC staff concludes that the State of Vermont Radioactive Materials Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement." The NRC staff also concludes that the proposed State of Vermont program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this XXth day of June, 2019.

For the Nuclear Regulatory Commission.

Andrea L. Kock, Director,
Division of Materials Safety, Security, State,
and Tribal Programs,
Office of Nuclear Material Safety
and Safeguards

APPENDIX A

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF VERMONT FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as “the Commission”) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as “the Act”), to enter into agreements with the Governor of the State of Vermont (hereinafter referred to as “the State”) providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the State is authorized under 18 V.S.A. § 1653 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State certified on April 11, 2019, that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of Vermont acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 7 and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(3) of the Act;
3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material; and
5. Special nuclear material, in quantities not sufficient to form a critical mass.

ARTICLE II

This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

- A. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
- B. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons;
- C. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
- D. The regulation of the construction, operation and decommissioning of any production or utilization facility or any uranium enrichment facility;
- E. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
- F. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
- G. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission; and
- H. The regulation of activities not exempt from Commission regulation as stated in 10 CFR Part 150.

ARTICLE III

With the exception of those activities identified in Article II, paragraph four through paragraph eight, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, paragraph one through three, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will

continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of Vermont, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act, if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken

by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE X

This Agreement shall become effective on **[date]**, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at **[location]** this **[date]** day of **[month]**, 2019.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, Chairman

Done at **[location]** this **[date]** day of **[month]**, 2019.

For the State of Vermont.

Philip B. Scott, Governor