



POLICY ISSUE **(Notation Vote)**

May 31, 2019

SECY-19-0058

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: PROPOSED AGREEMENT BETWEEN THE STATE OF VERMONT
AND THE COMMISSION PURSUANT TO SECTION 274 OF THE
ATOMIC ENERGY ACT OF 1954, AS AMENDED

PURPOSE:

To request Commission approval to publish the proposed Agreement with the State of Vermont (State or Vermont) and a summary of the draft U.S. Nuclear Regulatory Commission (NRC) staff assessment of the State's regulatory program in the *Federal Register* (FR) for public comment.

BACKGROUND:

Section 274b of the Atomic Energy Act of 1954, as amended (AEA or the Act), authorizes the Commission to enter into an Agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. In 1981, the Commission adopted the policy statement entitled, "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). The policy statement was amended on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376). The Office of Nuclear Material Safety and Safeguards (NMSS) subsequently adopted Procedure SA-700, "Processing an Agreement," as an internal procedure for applying the policy statement to the processing of a new Agreement. The criteria and approaches in these documents form the basis for the staff's evaluation of the State's request.

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301-415-2598

DISCUSSION:

By letter dated April 11, 2019, Governor Philip B. Scott requested that the Commission enter into an Agreement with the State under Section 274b of the Act (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19116A227). The Governor requested that the Commission discontinue its regulatory authority for AEA §§ 11e.(1), 11e.(3), and 11e.(4) byproduct materials, source materials, and special nuclear materials not sufficient to form a critical mass, and allow Vermont to assume regulatory authority for such material under the Agreement.

Governor Scott certified that the State has a program for the control of radiation hazards that is adequate to protect public health and safety within the State with respect to the materials covered by the proposed Agreement. The Governor further certified that the State wishes to assume the regulatory responsibility for those materials.

Pending the Commission's approval, as required by Section 274e of the Act, the NRC staff will publish the proposed Agreement for comment in the FR once each week for four consecutive weeks. The FR notice (Enclosure 1) will also include a summary of the staff's draft assessment of the proposed Vermont regulatory program. Consistent with the process used for the Wyoming, New Jersey, Virginia, and Pennsylvania Agreements, the NRC staff plans to publish the proposed Agreement in the FR for public comment, in parallel with the Commission's review of the staff's draft assessment (Enclosure 2). Following the public comment period and the resolution of public comments, the NRC staff will be prepared to recommend whether the Commission should approve the proposed Agreement. The NRC staff will include an updated schedule, along with an analysis of the public comments, as part of its final paper to the Commission. If approved by the Commission, the final Agreement will be published in the FR within 30 days after signature by the Chairman and the Governor of Vermont. The State requested an effective date for the Agreement of October 1, 2019.

The NRC staff's draft assessment of the State's program covered seven subjects: objectives, radiation protection standards, prior evaluation of uses of radioactive material, inspection, enforcement, personnel, and administration. Based on its draft assessment, the NRC staff has concluded that the State's regulatory program is compatible with the NRC's regulatory program and is, therefore, adequate to protect public health and safety, with the exception of several sections of the final Vermont Radioactive Materials Regulations that NRC staff identified as not compatible with the NRC's regulations. The staff also identified a limited number of editorial comments that are not necessary for compatibility but should be addressed in the State's next rulemaking. 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). The resolution of these comments does not interfere with the NRC staff's processing of Vermont's Agreement State Application. Therefore, by 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, source, and special nuclear materials in quantities not sufficient to form a critical mass.

If the proposed Agreement is approved, the NRC would transfer 36 specific licenses to the State's jurisdiction.

COMMITMENT:

Listed below are the actions or activities committed to by the staff in this paper.

1. The staff will provide an updated schedule, an analysis of public comments, and the staff's recommendation regarding whether the Agreement should be approved in the final paper to the Commission.

CONCLUSIONS:

The NRC staff concludes that, based on its draft assessment, the State will satisfy the criteria in the Commission's policy statement, and therefore, would meet the requirements of Section 274 of the Act. The NRC staff also concludes that the proposed State program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, will be compatible with the NRC's regulatory program on the effective date of the Agreement and will adequately protect public health and safety.

RECOMMENDATIONS:

The staff recommends that the Commission:

1. Approve the publication of the enclosed FR notice once each week for four consecutive weeks, as required by the Act.
2. Review the proposed Agreement between the State and the NRC pursuant to Section 274 of the Act, and the draft NRC staff assessment of the State's regulatory program, in parallel with the publication of the proposed Agreement in the FR.

Note:

- a. The staff will place a copy of the NRC Staff Draft Assessment (summarized in the FR Notice) in the NRC's Public Electronic Reading Room, on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>, and into ADAMS.
- b. The Office of Congressional Affairs will dispatch letters to the appropriate Congressional Committees and the Vermont Congressional Delegation informing them that the Commission is considering entering into an Agreement with the State.
- c. The Office of Public Affairs will issue a press release.
- d. NMSS will dispatch a letter to each State and to each of the following Federal Agencies listed in NMSS Procedure SA-700: Occupational Safety and Health Administration, Department of Energy, Council on Environmental Quality, Food and Drug Administration, Environmental Protection Agency, and Department of Homeland Security.
- e. The staff will continue working with the State of Vermont to ensure an efficient transition of byproduct, source, and special nuclear material licensees in the State of Vermont within legal requirements.

The staff requests that the Commission provide a staff requirements memorandum, including changes to the FR notice of the proposed Agreement with the State of Vermont and summary of

the draft NRC staff assessment of the State's regulatory program, by June 17, 2019, so that the agency can finalize and issue the Agreement by September 30, 2019.

RESOURCES:

Resources for this activity are included in the Fiscal Year (FY) 2019 enacted budget and the FY 2020 Congressional Budget Justification. Resource estimates are in Enclosure 3, "FY 2019 and 2020 Resources."

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection.



Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. Draft Federal Register notice,
Including the Summary of the Draft
Staff Assessment and the Proposed
Agreement
2. Draft NRC Staff Assessment of the
Proposed Vermont Byproduct
Materials Program
3. FY 2019 and 2020
Resources

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COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF
1954, AS AMENDED DATED: May 31, 2019

DATED:

ADAMS Accession No.: ML19115A212 (package) ML19116A073 (paper)						
OFFICE	MSST	MSST	MSST	OGC	RI	NSIR
NAME	DWhite	PMichalak	AKock	MSegarnick for MSpencer	DLew	BHolian
DATE	4/17/19	4/17/19	4/30/19	NLO 5/9/19	5/6/19	5/8/19
OFFICE	CFO	NMSS	EDO			
NAME	MWyle	JLubinski	MDoane			
DATE	5/8/19	5/17/19	05/ 31 /19			

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