

NOV 15 1996

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-96-117)

Your attention is invited to the attached correspondence which contains:

INCIDENT AND EVENT INFORMATION.....

PROGRAM MANAGEMENT INFORMATION.....XX

Request for Comments on
Proposed Management Directive
5.8, "Proposed 274b Agreements
With States"

TRAINING COURSE INFORMATION.....

TECHNICAL INFORMATION.....

OTHER INFORMATION.....

Supplementary Information: We have enclosed for your review and comment a draft Management Directive 5.8, "Proposed 274b Agreements With States." This Management Directive contains the implementing procedures for phasing in of new agreements. The handbook attached to the Management Directive contains an overview of the phasing in process, and a standard agreement with a protocol for phased implementation of new agreements. We would appreciate your comments by December 16, 1996.

If you have any questions regarding this correspondence, please contact me or the individual named below.

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Original Signed By:
PAUL H. LOHAUS

Paul Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

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DATE	011/13/96	11/14/96	11/15/96			

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 15, 1996

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

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Paul Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

DRAFT FOR COMMENTS¹
MANAGEMENT DIRECTIVE 5.8
PROPOSED 274b AGREEMENTS WITH STATES

¹ This information request has been approved by OMB, NO. 3150-0029, expiration 04/30/98. Estimated burden per response to comply with this voluntary collection request: 1 hours. Forward comments regarding burden estimate to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0052), Office of Management and Budget, Washington, DC 20503. NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

U.S. NUCLEAR REGULATORY COMMISSION
Volume 5: Governmental Relations and Public Affairs

OSP

Policy.
(5.8-01)

- It is the policy of the U.S. Nuclear Regulatory Commission to implement procedures for establishing new agreements with individual States pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

Objectives.
(5.8-02)

- To establish a system for an orderly transition in the discontinuance of certain regulatory authority by the NRC with assumption thereof by the State through a standard agreement with a phased implementation protocol.

Organizational Responsibilities and Delegations of Authority
(5.8-03)

The Commission
(031)

- Approves requests from a Governor to enter into an agreement under Section 274 of the Atomic Energy Act of 1954, as amended.
- Approves policy matters related to NRC's Agreement States program.

The Executive Director for Operations (EDO)
(032)

- Provides management direction and oversight for the activities described herein.

The Director, Office of State Programs
(033)

- Coordinates the review and action on State requests for 274b agreements or amendments to agreements with cognizant regional administrator and office directors. (a)
- Identifies an NRC contact, prepares correspondence to the State, as appropriate, and provides a schedule for accomplishing staff work on the agreement request. (b)
- Prepares a Commission Paper that analyzes and responds to public comments in coordination with OGC and affected offices for final approval by the Commission. (c)

- Prepares approved agreement for the signature of the Chairman and Governor. Arranges all post signing coordination for the transfer of regulatory authority under the effective agreement. (d)

Office Directors and Regional Administrators
(034)

- Consult with the Director, OSP, concerning the proposed agreement. (a)
- Appoint principal working-level contacts for review of the proposed agreement. (b)
- Review, comment and concur, if appropriate, on the proposed agreement and final Commission Paper. (c)

Regional Administrators
(035)

- Coordinate with the State prior to the agreement on the licenses to be transferred when the agreement is effective. (a)
- During the initial phase, provide the opportunity for license reviews from the State seeking an Agreement to review complex licensing casework in progress at the Region.
- Coordinate the transfer of licenses, license files and other appropriate material when agreement is effective, in accordance with the phased agreement protocol. (b)

Applicability.
(5.8-04)

The policy and guidance in this directive and handbook apply to all NRC employees who process a request for a 274b agreement. (a)

Handbook.
(5.8-05)

Handbook 5.8 contains an overview of the process, guidelines and a standard agreement with a protocol for phased implementation of a new agreement.

References.
(5.8-06)

Atomic Energy Act of 1954, as amended (42 USC. 2011 et seq.)

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 48 FR 33376, July 21, 1983).

Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program (60 FR 39463, August 2, 1995).

Evaluation of Agreement State Radiation Control Programs (60 FR 54734, October 25, 1995).

Management Directive 5.6, Integrated Materials Performance Evaluation Program, approved September 12, 1995.

Management Directive 5.9, Adequacy and Compatibility of Agreement State Programs, approved _____.

PROPOSED 274b AGREEMENTS WITH STATES

HANDBOOK 5.8



Contents

Overview (A)

Office of State Programs and Regional Responsibilities (B)

Process Sequence for New Agreements (C)

Standard Agreement and Phased Implementation Protocol (D)

Exhibits

1 Standard Agreement under Section 274b

2 Protocol for Phased Implementation of the Section 274b Agreement

Overview (A)

As authorized under Section 274 of the Atomic Energy Act of 1954, as amended, the policy of the NRC is to enter into agreements with States -

- (1)

- Upon certification by the Governor 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 the proposed agreement and the State desires to assume regulatory responsibility for such material. (a)
- After a finding by the Commission that the State program is in accordance with the requirements of Subsection o of Section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect public health and safety with respect to the materials covered by the proposed agreement. (b)

The NRC believes that a formal phased implementation process, during which a State initially assumes authority over smaller licenses of less regulatory complexity, would be advantageous to both NRC and an Agreement State. It would provide the NRC an opportunity to provide for an orderly transition of licensed activities to the State. It may also help to identify any areas of the State's program that require additional guidance from NRC before the State assumes full responsibility over all activities covered under the Agreement. From the State perspective, it should provide new Agreement States an opportunity to gain experience with their programs prior to having responsibility for more complex licenses.

Therefore, NRC plans a phased implementation process for future agreements. As with past practice, NRC will make a finding that the State's entire program is adequate and compatible with that of the NRC. The Agreement itself would identify the dates at which the new Agreement State would assume authority over certain categories of licensees (i.e., the implementation dates for the phases). In the initial phase, the State will exercise full regulatory authority over categories of licensees with programs of lesser complexity. During this first phase, the State will perform all regulatory functions for the transferred licenses. The remaining categories will be transferred to the Agreement State's jurisdiction at the date fixed in the Agreement for the implementation of the second phase. To assist in the phased implementation, NRC would conduct a review of the State's entire program under the Integrated Materials Performance Evaluation Program prior to the date fixed in the agreement for implementation of the second phase to ensure the State's program continues to be adequate to protect public health and safety and compatible with NRC's regulatory program. (See Management Directive 5.6 for more detail about the evaluation of the State's program and Management Directive 5.9 (under development) for

more detail about the adequacy and compatibility of Agreement State programs.)

This management directive and handbook supplement the 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 48 FR 33376, July 21, 1983).

Office of State Programs and Regional Responsibilities (B)

The Office of State Programs will - (1)

- Plan, schedule and arrange meetings with the State to discuss issues related to the request for an agreement. (a)
- Coordinate the protocol to be published with the proposed agreement with the State and appropriated headquarters and regional offices on the phased implementation of the agreement. (b)
- Takes the lead in drafting a Commission Paper which includes the staff assessment, proposed agreement with phased implementation protocol and a proposed Federal Register notice publishing this information for public comment for 4 consecutive weeks according to the Atomic Energy Act. (c)

The Regional Office in which the State is located will - (2)

- Invite inspectors from the State seeking an agreement to accompany regional staff on inspections conducted in that State prior to the agreement. (a)
- Meet with representatives of the State seeking an agreement to describe and explain licenses and files that will be transferred to the State. (b)
- Assure, to the extent practicable, that licensing and inspection backlogs are as small as possible for licensees in the State seeking an agreement. (c)
- Coordinate the transfer of license files and other appropriate material when agreement is effective. (d)
- Transfer license files for the remaining categories of licensees to the Agreement State if the performance of the program is adequate to protect public health and safety and compatible with the NRC programs, in accordance with the phased agreement protocol. (e)

Process Sequence for New Agreements (C)

The typical sequence for NRC in processing a request for an agreement is summarized below:

- Receive a letter of intent from the Governor of the State interested in an agreement with NRC. (1)
- Provide guidance to the State on the necessary elements of an Agreement State program and its phased implementation, including draft legislation, regulations, and program description. (2)
- Receive and review the request for an agreement from the Governor, the program description, and necessary program elements. (3)
- Transmit and resolve any outstanding items with the State regarding the proposed agreement request. (4)
- Prepare Commission Paper on the proposed agreement request, including staff assessment and Federal Register Notice with the proposed agreement and phased implementation protocol for public comment. (5)
- Publish Federal Register Notice with the proposed agreement and protocol for public comment for 4 consecutive weeks according to the Atomic Energy Act. (6)
- Prepare Commission Paper that analyzes and responds to public comments and provides staff recommendations on the agreement for final approval by the Commission. (7)
- Prepare approved agreement for the signature of the Chairman and Governor upon Commission approval and arrange signing ceremony. (8)
- Arrange all post signing coordination for the orderly transfer of regulatory authority under the effective agreement according to the implementing protocol. (9)

Standard Agreement and Phased Implementation Protocol (D)

The standard agreement describes the categories of materials to be regulated by the State and the effective date of the agreement. (1)

The protocol to the standard agreement deals with phased implementation of the effective agreement and defines the categories of licenses for each implementation phase. (The Agreement itself would identify the dates at which the new Agreement State would assume authority over certain categories of licensees, i.e., the implementation dates for the phases). In the initial phase, the State will exercise full regulatory authority over categories of licensees of less regulatory complexity. The remaining categories will be transferred to the Agreement State's

jurisdiction at the date fixed in the Agreement for the implementation
of the second phase. (2)



Exhibit 1

AN AGREEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE STATE/COMMONWEALTH OF [insert name of State]

FOR THE

DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY

AND

RESPONSIBILITY WITHIN THE STATE/COMMONWEALTH 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 (hereinafter referred to as the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) 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/Commonwealth of [insert name] is authorized under [cite enabling statute] to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State/Commonwealth of [insert name] certified on [date], that the State/Commonwealth of [insert name] (hereinafter referred to as the State/Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State/Commonwealth covered by this Agreement, and that the State/Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State/Commonwealth 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/Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the State/Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that State/Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State/Commonwealth 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 provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State/Commonwealth acting in behalf of the State/Commonwealth as follows:

ARTICLE I¹

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, and in accordance with the phased Agreement protocol attached, the regulatory authority of the Commission in the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct materials as defined in Section 11e.(1) of the Act;
- B. Byproduct materials as defined in Section 11e.(2) of the Act;
- C. Source materials;
- D. Special nuclear materials in quantities not sufficient to form a critical mass.
- E. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;
- F. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

¹If the State/Commonwealth chooses not to regulate all categories of material listed in Article I, those categories where NRC will retain authority should be listed in Article II, A.

ARTICLE II

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:
1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
 2. 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;
 3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
 4. 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 be so disposed of without a license from the Commission;
 5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.²
- B.³ Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:
1. Prior to the termination of a State/Commonwealth license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
 2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

²Include only if the State is not authorized to conduct sealed source and device reviews for purposes of registration for distribution.

³Article II.B. is included in the agreement only if the State is authorized to regulate 11e.(2) byproduct material.

- RECEIVED
- a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
 - b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State/Commonwealth at the option of the State/Commonwealth (provided such option is exercised prior to termination of the license);
 - c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State/Commonwealth pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
 - d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State/Commonwealth;
 - e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State/Commonwealth, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and
 - f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

ARTICLE III⁴

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the State/Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs [those activities not included in the agreement], whereby the State/Commonwealth 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 from 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 State/Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State/Commonwealth and the Commission for protection against hazards of radiation and to assure that the State/Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State/Commonwealth 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/Commonwealth 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. The State/Commonwealth agrees to report to NRC all immediately reportable, 24-hour reportable, and 30-day reportable events reported to the State by its licensees.

⁴Delete this Article and renumber the remaining articles if the State/Commonwealth assumes authority over all categories of materials in Article II.

ARTICLE VII

The Commission and the State/Commonwealth 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/Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State/Commonwealth, or upon request of the Governor of the State/Commonwealth, 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/Commonwealth 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/Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the State/Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a State/Commonwealth 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 IX⁵

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State/Commonwealth shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State/Commonwealth requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

- A. The total amount of funds the State/Commonwealth collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State/Commonwealth license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining

⁵Use Article IX only if the State is authorized to regulate 11e.(2) byproduct material.

to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

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. In accordance with the attached protocol, the Commission will transfer the groups of licenses as shown therein as specified in the protocol.

Done at [City, State] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____, Chairman

FOR THE STATE/COMMONWEALTH OF _____

_____, Governor

Exhibit 2

ATTACHMENT TO SECTION 274B AGREEMENT WITH [State/Commonwealth] PROTOCOL FOR PHASED IMPLEMENTATION OF THE AGREEMENT

INTRODUCTION

A formal phased implementation process, during which a [State/Commonwealth] assumes authority over smaller licenses of less regulatory complexity in the initial phase, is advantageous to both NRC and an Agreement State.

It provides NRC an opportunity to carry out an orderly transition of licensed activities to the [State/Commonwealth]. It may also help to identify any areas of the State's program that require additional guidance from NRC before the State assumes full responsibility over all activities covered under the Agreement.

It provides new Agreement States an opportunity to gain experience with their program prior to having responsibility for more complex licenses.

PROCESS

Therefore, upon the effective date of [State/Commonwealth] Agreement, NRC and [State/Commonwealth] will use a phased implementation process for transfer of the licenses.

- In the initial phase, which will consist of [time frame-example: 1 year] the [State] will assume full regulatory authority over priority 3 -7 groups of licensee programs as classified under Inspection Manual Chapter 2800 for the categories of [byproduct, special nuclear material or source material as appropriate]. During this phase, the State/Commonwealth will perform all regulatory functions for the transferred licenses.
- NRC will continue to perform all regulatory functions for the priority 1 and 2 groups of licensee programs (as classified under Inspection Manual Chapter 2800) which have not been transferred. The [State/Commonwealth] will be invited to observe all NRC inspections of priority 1 and 2 licensee programs conducted by NRC during this period for those programs under the Agreement.
- To assist in the phased implementation, NRC will conduct a review of the program (under the Integrated Materials Performance Evaluation Program) prior to the date fixed in the agreement for implementation of the second phase to ensure the [State's/Commonwealth's] program continues to be adequate to protect public health and safety and compatible with NRC's regulatory program.
- On [date], the remaining groups of licensees (i.e. the priority 1 and 2 licensee programs) will be transferred to the [State/Commonwealth].

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 15, 1996

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- To establish a system for an orderly transition in the discontinuance of certain regulatory authority by the NRC with assumption thereof by the State through a standard agreement with a phased implementation protocol.

Organizational Responsibilities and Delegations of Authority
(5.8-03)

The Commission
(031)

- Approves requests from a Governor to enter into an agreement under Section 274 of the Atomic Energy Act of 1954, as amended.
- Approves policy matters related to NRC's Agreement States program.

The Executive Director for Operations (EDO)
(032)

- Provides management direction and oversight for the activities described herein.

The Director, Office of State Programs
(033)

- Coordinates the review and action on State requests for 274b agreements or amendments to agreements with cognizant regional administrator and office directors. (a)
- Identifies an NRC contact, prepares correspondence to the State, as appropriate, and provides a schedule for accomplishing staff work on the agreement request. (b)
- Prepares a Commission Paper that analyzes and responds to public comments in coordination with OGC and affected offices for final approval by the Commission. (c)

- Prepares approved agreement for the signature of the Chairman and Governor. Arranges all post signing coordination for the transfer of regulatory authority under the effective agreement. (d)

Office Directors and Regional Administrators (034)

- Consult with the Director, OSP, concerning the proposed agreement. (a)
- Appoint principal working-level contacts for review of the proposed agreement. (b)
- Review, comment and concur, if appropriate, on the proposed agreement and final Commission Paper. (c)

Regional Administrators (035)

- Coordinate with the State prior to the agreement on the licenses to be transferred when the agreement is effective. (a)
- During the initial phase, provide the opportunity for license reviews from the State seeking an Agreement to review complex licensing casework in progress at the Region.
- Coordinate the transfer of licenses, license files and other appropriate material when agreement is effective, in accordance with the phased agreement protocol. (b)

Applicability. (5.8-04)

The policy and guidance in this directive and handbook apply to all NRC employees who process a request for a 274b agreement. (a)

Handbook. (5.8-05)

Handbook 5.8 contains an overview of the process, guidelines and a standard agreement with a protocol for phased implementation of a new agreement.

References. (5.8-06)

Atomic Energy Act of 1954, as amended (42 USC. 2011 et seq.)

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 48 FR 33376, July 21, 1983).

Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program (60 FR 39463, August 2, 1995).

Evaluation of Agreement State Radiation Control Programs (60 FR 54734, October 25, 1995).

Management Directive 5.6, Integrated Materials Performance Evaluation Program, approved September 12, 1995.

Management Directive 5.9, Adequacy and Compatibility of Agreement State Programs, approved _____.

PROPOSED 274b AGREEMENTS WITH STATES

HANDBOOK 5.8

Contents

Overview (A)

Office of State Programs and Regional Responsibilities (B)

Process Sequence for New Agreements (C)

Standard Agreement and Phased Implementation Protocol (D)

Exhibits

1 Standard Agreement under Section 274b

2 Protocol for Phased Implementation of the Section 274b Agreement

Overview (A)

As authorized under Section 274 of the Atomic Energy Act of 1954, as amended, the policy of the NRC is to enter into agreements with States -
- (1)

- Upon certification by the Governor 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 the proposed agreement and the State desires to assume regulatory responsibility for such material. (a)
- After a finding by the Commission that the State program is in accordance with the requirements of Subsection o of Section 274 and in all other respects compatible with the Commission's program for the regulation of such materials, and is adequate to protect public health and safety with respect to the materials covered by the proposed agreement. (b)

The NRC believes that a formal phased implementation process, during which a State initially assumes authority over smaller licenses of less regulatory complexity, would be advantageous to both NRC and an Agreement State. It would provide the NRC an opportunity to provide for an orderly transition of licensed activities to the State. It may also help to identify any areas of the State's program that require additional guidance from NRC before the State assumes full responsibility over all activities covered under the Agreement. From the State perspective, it should provide new Agreement States an opportunity to gain experience with their programs prior to having responsibility for more complex licenses.

Therefore, NRC plans a phased implementation process for future agreements. As with past practice, NRC will make a finding that the State's entire program is adequate and compatible with that of the NRC. The Agreement itself would identify the dates at which the new Agreement State would assume authority over certain categories of licensees (i.e., the implementation dates for the phases). In the initial phase, the State will exercise full regulatory authority over categories of licensees with programs of lesser complexity. During this first phase, the State will perform all regulatory functions for the transferred licenses. The remaining categories will be transferred to the Agreement State's jurisdiction at the date fixed in the Agreement for the implementation of the second phase. To assist in the phased implementation, NRC would conduct a review of the State's entire program under the Integrated Materials Performance Evaluation Program prior to the date fixed in the agreement for implementation of the second phase to ensure the State's program continues to be adequate to protect public health and safety and compatible with NRC's regulatory program. (See Management Directive 5.6 for more detail about the evaluation of the State's program and Management Directive 5.9 (under development) for

more detail about the adequacy and compatibility of Agreement State programs.)

This management directive and handbook supplement the 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 48 FR 33376, July 21, 1983).

Office of State Programs and Regional Responsibilities (B)

The Office of State Programs will - (1)

- Plan, schedule and arrange meetings with the State to discuss issues related to the request for an agreement. (a)
- Coordinate the protocol to be published with the proposed agreement with the State and appropriated headquarters and regional offices on the phased implementation of the agreement. (b)
- Takes the lead in drafting a Commission Paper which includes the staff assessment, proposed agreement with phased implementation protocol and a proposed Federal Register notice publishing this information for public comment for 4 consecutive weeks according to the Atomic Energy Act. (c)

The Regional Office in which the State is located will - (2)

- Invite inspectors from the State seeking an agreement to accompany regional staff on inspections conducted in that State prior to the agreement. (a)
- Meet with representatives of the State seeking an agreement to describe and explain licenses and files that will be transferred to the State. (b)
- Assure, to the extent practicable, that licensing and inspection backlogs are as small as possible for licensees in the State seeking an agreement. (c)
- Coordinate the transfer of license files and other appropriate material when agreement is effective. (d)
- Transfer license files for the remaining categories of licensees to the Agreement State if the performance of the program is adequate to protect public health and safety and compatible with the NRC programs, in accordance with the phased agreement protocol. (e)

Process Sequence for New Agreements (C)

The typical sequence for NRC in processing a request for an agreement is summarized below:

- Receive a letter of intent from the Governor of the State interested in an agreement with NRC. (1)
- Provide guidance to the State on the necessary elements of an Agreement State program and its phased implementation, including draft legislation, regulations, and program description. (2)
- Receive and review the request for an agreement from the Governor, the program description, and necessary program elements. (3)
- Transmit and resolve any outstanding items with the State regarding the proposed agreement request. (4)
- Prepare Commission Paper on the proposed agreement request, including staff assessment and Federal Register Notice with the proposed agreement and phased implementation protocol for public comment. (5)
- Publish Federal Register Notice with the proposed agreement and protocol for public comment for 4 consecutive weeks according to the Atomic Energy Act. (6)
- Prepare Commission Paper that analyzes and responds to public comments and provides staff recommendations on the agreement for final approval by the Commission. (7)
- Prepare approved agreement for the signature of the Chairman and Governor upon Commission approval and arrange signing ceremony. (8)
- Arrange all post signing coordination for the orderly transfer of regulatory authority under the effective agreement according to the implementing protocol. (9)

Standard Agreement and Phased Implementation Protocol (D)

The standard agreement describes the categories of materials to be regulated by the State and the effective date of the agreement. (1)

The protocol to the standard agreement deals with phased implementation of the effective agreement and defines the categories of licenses for each implementation phase. (The Agreement itself would identify the dates at which the new Agreement State would assume authority over certain categories of licensees, i.e., the implementation dates for the phases). In the initial phase, the State will exercise full regulatory authority over categories of licensees of less regulatory complexity. The remaining categories will be transferred to the Agreement State's

jurisdiction at the date fixed in the Agreement for the implementation of the second phase. (2)

Exhibit 1

AN AGREEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE STATE/COMMONWEALTH OF [insert name of State]

FOR THE

DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY

AND

RESPONSIBILITY WITHIN THE STATE/COMMONWEALTH 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 (hereinafter referred to as the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) 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/Commonwealth of [insert name] is authorized under [cite enabling statute] to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State/Commonwealth of [insert name] certified on [date], that the State/Commonwealth of [insert name] (hereinafter referred to as the State/Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State/Commonwealth covered by this Agreement, and that the State/Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State/Commonwealth 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/Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the State/Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that State/Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State/Commonwealth 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 provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State/Commonwealth acting in behalf of the State/Commonwealth as follows:

ARTICLE I¹

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, and in accordance with the phased Agreement protocol attached, the regulatory authority of the Commission in the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

- A. Byproduct materials as defined in Section 11e.(1) of the Act;
- B. Byproduct materials as defined in Section 11e.(2) of the Act;
- C. Source materials;
- D. Special nuclear materials in quantities not sufficient to form a critical mass.
- E. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;
- F. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

¹If the State/Commonwealth chooses not to regulate all categories of material listed in Article I, those categories where NRC will retain authority should be listed in Article II, A.

ARTICLE II

- A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:
1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
 2. 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;
 3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;
 4. 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 be so disposed of without a license from the Commission;
 5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.²
- B.³ Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:
1. Prior to the termination of a State/Commonwealth license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
 2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

²Include only if the State is not authorized to conduct sealed source and device reviews for purposes of registration for distribution.

³Article II.B. is included in the agreement only if the State is authorized to regulate 11e.(2) byproduct material.

- a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;
- b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State/Commonwealth at the option of the State/Commonwealth (provided such option is exercised prior to termination of the license);
- c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State/Commonwealth pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;
- d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State/Commonwealth;
- e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State/Commonwealth, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and
- f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

ARTICLE III⁴

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the State/Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs [those activities not included in the agreement], whereby the State/Commonwealth 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 from 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 State/Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State/Commonwealth and the Commission for protection against hazards of radiation and to assure that the State/Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State/Commonwealth 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/Commonwealth 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. The State/Commonwealth agrees to report to NRC all immediately reportable, 24-hour reportable, and 30-day reportable events reported to the State by its licensees.

⁴Delete this Article and renumber the remaining articles if the State/Commonwealth assumes authority over all categories of materials in Article II.

ARTICLE VII

The Commission and the State/Commonwealth 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/Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State/Commonwealth, or upon request of the Governor of the State/Commonwealth, 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/Commonwealth 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/Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the State/Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a State/Commonwealth 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 IX⁵

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State/Commonwealth shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State/Commonwealth requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

- A. The total amount of funds the State/Commonwealth collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State/Commonwealth license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and
- B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining

⁵Use Article IX only if the State is authorized to regulate 11e.(2) byproduct material.

to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

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. In accordance with the attached protocol, the Commission will transfer the groups of licenses as shown therein as specified in the protocol.

Done at [City, State] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____, Chairman

FOR THE STATE/COMMONWEALTH OF _____

_____, Governor

Exhibit 2

ATTACHMENT TO SECTION 274B AGREEMENT WITH [State/Commonwealth] PROTOCOL FOR PHASED IMPLEMENTATION OF THE AGREEMENT

INTRODUCTION

A formal phased implementation process, during which a [State/Commonwealth] assumes authority over smaller licenses of less regulatory complexity in the initial phase, is advantageous to both NRC and an Agreement State.

It provides NRC an opportunity to carry out an orderly transition of licensed activities to the [State/Commonwealth]. It may also help to identify any areas of the State's program that require additional guidance from NRC before the State assumes full responsibility over all activities covered under the Agreement.

It provides new Agreement States an opportunity to gain experience with their program prior to having responsibility for more complex licenses.

PROCESS

Therefore, upon the effective date of [State/Commonwealth] Agreement, NRC and [State/Commonwealth] will use a phased implementation process for transfer of the licenses.

- In the initial phase, which will consist of [time frame-example: 1 year] the [State] will assume full regulatory authority over priority 3 -7 groups of licensee programs as classified under Inspection Manual Chapter 2800 for the categories of [byproduct, special nuclear material or source material as appropriate]. During this phase, the State/Commonwealth will perform all regulatory functions for the transferred licenses.
- NRC will continue to perform all regulatory functions for the priority 1 and 2 groups of licensee programs (as classified under Inspection Manual Chapter 2800) which have not been transferred. The [State/Commonwealth] will be invited to observe all NRC inspections of priority 1 and 2 licensee programs conducted by NRC during this period for those programs under the Agreement.
- To assist in the phased implementation, NRC will conduct a review of the program (under the Integrated Materials Performance Evaluation Program) prior to the date fixed in the agreement for implementation of the second phase to ensure the [State's/Commonwealth's] program continues to be adequate to protect public health and safety and compatible with NRC's regulatory program.
- On [date], the remaining groups of licensees (i.e. the priority 1 and 2 licensee programs) will be transferred to the [State/Commonwealth].