

**GENERAL OVERVIEW OF AN  
AGREEMENT STATE PROGRAM**

**U.S. NUCLEAR REGULATORY COMMISSION  
OFFICE OF STATE PROGRAMS**

**COMPLETED FOR  
SPAIN**

**JUNE, 1997**

**OUTLINE**

- I. Background**
- II. Division of Authority**
- III. Details on Becoming an Agreement State**
- IV. Activities Prior Signing Agreement**
- V. Timeline For Processing an Agreement**
- VI. Post Agreement Program**

## **I. BACKGROUND**

### **SECTION 274 OF THE ATOMIC ENERGY ACT**

- Enacted in 1959
- Initiative From States to Regulate Atomic Energy
- Recognizes Interests of States
- Establishes Cooperative Program
- Provides a Mechanism for Transfer of Certain NRC Authority
- Provides for Coordination in Development of Standards
- Reserves Certain Areas for NRC to Regulate
- Modified in 1978 to Direct NRC to Periodically Review Agreement State Programs
- DeConcini Amendment in 1980 Authorizes NRC to Suspend All or Part of an Agreement in an Emergency

### **AGREEMENT STATE STATUS - FACTORS FOR CONSIDERATION**

- Fulfills Intent of Section 274
- State Radiation Control Agencies Regulate All Radiation Sources
- Regulatory Agency Is Closer to Licensees and Can Generally Be More Responsive to Licensees
- Enhances Core of Knowledgeable Persons at State Level
- Single Regulatory Agency for Most Users
- States Must Fund Program Administration
- Some Licensees May Still Be Subject to More Than One Regulatory Agency
- Requires Coordination Between NRC and States

### **FUNDING AGREEMENT STATE PROGRAMS**

- NRC, As Matter of Policy, Does Not Provide Seed Money to Establish Agreement State Program
- NRC Not Authorized to Provide Operating Funds
- NRC Training, Travel, and Technical Assistance to Be Provided Under Reimbursable Agreements With States. Space Available, No-cost Tuition, NRC Training Available
- NRC Assesses License Fees (10 CFR 170 and 171)
- Over 90% of Material Licensees in US (NRC & State) Are Subject to Fees
- Model Legislation Includes Fee Authorization

## II. DIVISION OF AUTHORITY

### STATE AUTHORITY: CATEGORIES OF AGREEMENT

- Standard Agreement
  - Authority to Regulate:
    - Byproduct materials as defined in Section 11e(1) of the Atomic Energy Act (Material Yielded in or Made Radioactive Through the Process of Producing or Utilizing Special Nuclear Material)
    - Source material
    - Special nuclear material in quantities less than critical mass
  - State regulates all categories of licensees except uranium mills and low-level waste facilities
  - At State option, sealed source and device evaluation authority may be retained by NRC
- Uranium Mill Agreement
  - Authority to regulate byproduct materials as defined in Section 11e(2) of the Atomic Energy Act (tailings or wastes produced by the extraction or concentrations of uranium or thorium from ore)
- Low-Level Waste Agreement
  - Authority to regulate land disposal of radioactive waste
- Full Agreement
  - Authority to regulate all of the categories above

### AREAS OF AUTHORITY RESERVED TO NRC

- 10 CFR Part 150 - Implementing Regulations
- NRC Retains Authority Over
  - Federal agencies
  - Production and utilization facilities
  - Exports and imports
  - Disposal in the ocean
  - High level waste handling and disposal
  - Transfer of materials to persons exempt from licensing (consumer products)
  - Large quantities of special nuclear material
  - Off-shore waters
  - Certain aspects of mill tailings management

### **III. DETAILS ON BECOMING AN AGREEMENT STATE**

#### **OVERVIEW OF PROCESS TO BECOME AN AGREEMENT STATE (FUTURE REVISIONS LIKELY)**

- Letter of Intent From Governor
- OSP Project Manager Assigned
- State/NRC Negotiations Leading to Development of Draft Request
- Governor Requests Agreement and Certifies State Has Adequate Program
- Request Includes Supporting Legislation, Regulations, and Program Description
- NRC Staff Evaluation Against 1981 and 1983 Criteria for Agreements
- Commission Approval and Publication in the Federal Register for Public Review and Comment
- Chairman/Governor Signing Ceremony
- Orderly, Phased Assumption of Authority
- Continued Post-Agreement Exchange-of-Information and Assessment of Program Performance

#### **NRC CRITERIA FOR STATES ENTERING INTO AN AGREEMENT\***

- Comprehensive Radiation Protection Standards
- Licensing Program
- Inspection and Enforcement Program
- Adequate Number of Trained Personnel
- Provisions for Fair and Impartial Administration
- Arrangement for Discontinuing NRC Jurisdiction
- Additional Criteria for States Regulating Uranium or Thorium Mill Tailings
- Additional Criteria for Limited Agreement for Low-Level Waste

\* 1981/1983 Policy Statement: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement

#### **ACTIONS NRC MUST TAKE FOR STATE TO BECOME AGREEMENT STATE**

- Find the State Program Compatible
- Find the State Program Adequate to Protect Public Health and Safety
- Prepare Staff Assessment Based on 1981 and 1983 Policy Statement
- Publish the Staff's Assessment in the Federal Register for 4 Consecutive Weeks
- Arrange for Orderly, Phased Discontinuance of NRC Jurisdiction



## **PROVISIONS OF AGREEMENTS**

- **Effective Date of Transfer**
- **Continued Compatibility**
- **NRC Retains Authority in Area of Common Defense and Security and Safeguards for SNM**
- **Reciprocal Recognition of Licenses**
- **Termination of the Agreement**
- **Certain Conditions Regarding Mill Tailings for Those States with Mill Authority**

## **IV. ACTIVITIES PRIOR SIGNING AGREEMENT**

### **REVIEW OF STATE RADIATION CONTROL STATUTES, REGULATION, POLICIES, AND PROCEDURES**

- **Provides Authority for Governor to Enter into Agreement With the NRC**
- **Designates the Location of the Program (Agency) and Defines Authority**
- **Does Not Authorize Regulation in Areas Reserved to Federal Government**
- **Contains Declaration on Policy, Purpose, Technical Terms, Organization, Responsibilities and Administration, Etc.**
- **Review of State Radiation Control Regulations Equivalent to the Following NRC Regulations (State Rules Must be Up-To-Date and Compatible With NRC Rules in Effect at the Time of Agreement Signing):**
  1. **Part 19, "Notices, Instructions and Reports to Workers; Inspection and Investigations;"**
  2. **Part 20, "Standards for Protection Against Radiation;"**
  3. **Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material;"**
  4. **Part 31, "General Domestic Licenses for Byproduct Material;"**
  5. **Part 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct;"**
  6. **Part 33, "Specific Domestic Licenses of Broad Scope for Byproduct Material;"**
  7. **Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations;"**

**REVIEW OF STATE RADIATION CONTROL STATUTES, REGULATION, POLICIES,  
AND PROCEDURES (CONTINUED)**

8. Part 35, "Medical Use of Byproduct Material;"
9. Part 36, "Licensing and Radiation Safety Requirements for Irradiators;"
10. Part 39, "Licenses and Radiation Safety Requirements for Well Logging;"
11. Part 40, "Domestic Licensing of Source Material;"
12. Part 70, "Domestic Licensing of Special Nuclear Material;"
13. Part 71, "Packaging and Transportation of Radioactive Material;" 14. Certain Portions of Part 150, "Exemptions and Continued Authority in Agreement States and in Offshore Waters under Section 274."

**For LLW Authority:**

15. Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," and

**For Uranium Authority:**

16. Part 40, "Domestic Licensing of Source Material;" Appendix A.

**For Limited Agreement for Low-Level Waste Disposal:**

1. Part 19, "Notices, Instructions and Reports to Workers; Inspection and Investigations;"
2. Part 20, "Standards for Protection Against Radiation;"
3. Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste,"
4. Part 71, "Packaging and Transportation of Radioactive Material;"
5. Certain Portions of Part 150, "Exemptions and Continued Authority in Agreement States and in Offshore Waters Under Section 274."

**For Limited Agreement for Uranium Recovery Licensing:**

1. Part 19, "Notices, Instructions and Reports to Workers; Inspection and Investigations;"
2. Part 20, "Standards for Protection Against Radiation;"
3. Part 40, "Domestic Licensing of Source Material;" Appendix A.
4. Part 71, "Packaging and Transportation of Radioactive Material;"
5. Certain portions of Part 150, "Exemptions and Continued Authority in Agreement States and in Offshore Waters under Section 274."

- Review of State Radiation Control Program Narrative Description Policies, Practices and Procedures for Administration, Licensing, Inspection, and Enforcement

## REVIEW OF STATE RADIATION CONTROL STATUTES, REGULATION, POLICIES, AND PROCEDURES (CONTINUED)

- Investigative Aspects of Program Personnel Resources and Qualifications, Organization, Survey and Laboratory Instrumentation, Forms, Guidance, and Operating Procedures
- Policies and Procedures Must Be Written. (Reference Existing NRC or Submit Copies of State Procedures)
- Submittal of Draft Application Package for Review
- NRC Review and Comment on Draft Package

## FORMAL REQUEST FOR AGREEMENT BY THE GOVERNOR

- Letter From Governor
  - Specifies categories being requested
  - Certifies State is adequate
  - Certifies State has authority to enter agreement
  - Designates State agency for agreement program
  - Indicates type of ceremony desired, if any
- Enclosures to Letter From Governor
  - Proposed agreement document
  - State radiation control statutes
  - Program description
  - Radiation control regulations

## POST SUBMITTAL ACTIVITIES

- Acknowledgment Letter to Governor
- Office Review/Concurrence on Draft Federal Register Notice Containing NRC Assessment of State Program
- Send Draft Federal Register Notice to Commission for Approval and Publication for Once a Week for Four Consecutive Weeks
- Prepare Commission Action Paper With Any Public Comments Considered and With Appropriate Disposition Public Notifications
- Agreement Signing

## **V. TIMELINE FOR PROCESSING AN AGREEMENT (SUBJECT TO REVISION)**

- **Pre-Submittal Staff Review: 6 months - 1 year**  
(Time estimate assumes statutes, regulations, and program description have been drafted by State and are complete.)
- **Post-Submittal Staff Review: 5 - 7 months**
  - Formal review (4 - 5 months), preparation of staff assessment, and publication for comment
  - Analysis of public comments, final staff assessment, and (1 - 2 months) Commission approval
- **Signing Ceremony**  
1 month after Commission approval
- **Effective Date**  
1 month after signature

## **VI. POST AGREEMENT PROGRAM**

### **EXCHANGE OF INFORMATION**

- Reports of Unusual Events and Abnormal Occurrences in Agreement States
- Copies of Sealed Source and Device Evaluation, GL Licenses and "E" Licenses Exchanged
- Review of Draft and Final Regulations
- Annual Organization of Agreement States All Agreement States Meeting
- Other Workshops/Meetings

### **TECHNICAL ASSISTANCE**

- **Management Directive 5.7 "Technical Assistance to Agreement States"**
- **Confirmatory Licensing and Inspection Assistance**
  - Handled by correspondence or telephone
  - Casework (minor)
  - Licensing policy
  - Inspection practice
  - Interpretations

## TECHNICAL ASSISTANCE (CONTINUED)

- Direct Licensing or Inspection Assistance
  - Inspection
  - License application evaluation
  - Special evaluations and studies
  - Beginning in FY-97, provided under reimbursable agreements
- NRC Office Roles - Regions, SP, NMSS, OGC, AEOD

## TRAINING PROGRAM

- NRC Core Courses
  - Applied Health Physics (5 weeks)
  - Health Physics Technology (2 weeks)
  - Inspection Procedures ( 2 weeks in 1997)
  - Root Cause/Incident Investigation
  - Licensing Practices and Procedures
  - Diagnostic and Therapeutic Nuclear Medicine
  - Teletherapy and Brachytherapy
  - Industrial Radiography
  - Transportation of Radioactive Materials
- Other Courses
  - Safety Aspects of Well Logging
  - Irradiator Technology
  - Environmental Monitoring
  - Health Physics Engineering

## REVIEWS OF STATE PROGRAMS UNDER SECTION 274j

- Integrated Materials Performance Evaluation Program (IMPEP)
- Routine On-Site Review Frequency May be Up to Four Years Based on Program Performance
- Reviews Scaled to the Size of the Agreement State Program
- Five Common Performance Indicators
- Other Non-Common Performance Indicators
- Reviews Conducted by Team of NRC Offices (OSP, NMSS, Regional) and Agreement State Staff
- Management Review Board (MRB)
- Annual One-Day NRC/Agreement State Meeting in Years Between IMPEP Reviews

*U.S. NUCLEAR REGULATORY COMMISSION*

***DIRECTIVE TRANSMITTAL***

TN: DT-95-20

**To:** NRC Management Directives Custodians

**Subject:** Transmittal of Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)"

**Purpose:** Directive and Handbook 5.6 are being issued to establish the process by which the Office of Nuclear Material Safety and Safeguards and the Office of State Programs, with assistance from the Agreement States, conduct their periodic assessments of the NRC regions and Agreement States to determine the adequacy of the nuclear material licensing and inspection programs.

**Office of Origin:** Office of Nuclear Material Safety and Safeguards and Office of State Programs

**Contact:** George Deegan, 415-7834

**Date Approved:** September 12, 1995

**Volume:** 5 Governmental Relations and Public Affairs

**Directive:** 5.6 Integrated Materials Performance Evaluation Program (IMPEP)

**Availability:** U.S. Government Printing Office, (202) 512-2409



# ***Integrated Materials Performance Evaluation Program (IMPEP)***

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## ***Directive 5.6***

## Contents

Policy .....	1
Objectives .....	1
Organizational Responsibilities and Delegations of Authority .....	2
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) .....	2
Director, Office of Nuclear Material Safety and Safeguards (NMSS) and Director, Office of State Programs (OSP) .....	2
General Counsel .....	2
Director, Office for Analysis and Evaluation of Operational Data (AEOD) ....	3
Regional Administrators .....	3
Applicability .....	3
Handbook .....	3
References .....	3



# U. S. Nuclear Regulatory Commission

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NMSS/OSP

## Integrated Materials Performance Evaluation Program (IMPEP) Directive 5.6

### Policy (5.6-01)

It is the policy of the U.S. Nuclear Regulatory Commission to evaluate the regional materials programs and Agreement State radiation control programs in an integrated manner, using common performance indicators, to ensure that the public health and safety is being adequately protected.

### Objectives (5.6-02)

- To establish the process by which the Office of Nuclear Material Safety and Safeguards and the Office of State Programs conduct their periodic assessments to determine the adequacy of the licensing and inspection programs in the NRC regions and Agreement States. (021)
- To provide NRC and Agreement State management with a more systematic and integrated approach to evaluate the strengths and weaknesses of their nuclear material licensing and inspection programs. (022)
- To provide significant input in the regulatory decisionmaking process and indicate areas in which NRC and the Agreement States should dedicate more resources or management attention. (023)

## **Organizational Responsibilities and Delegations of Authority**

(5.6-03)

### **Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS)** (031)

- Oversees the integrated materials performance evaluation program (IMPEP). (a)
- Chairs management review boards. (b)
- Signs final reports issued to each region and Agreement State. (c)

### **Director, Office of Nuclear Material Safety and Safeguards (NMSS) and Director, Office of State Programs (OSP)** (032)

- Implement the IMPEP within NMSS and OSP. Provide staffing support and training for review teams. (a)
- Establish a schedule and develop a detailed review regimen for conducting the reviews in each region and Agreement State. (b)
- Monitor the IMPEP process; evaluate and develop IMPEP policy, criteria, and methodology, and assess the uniformity and adequacy of the implementation of the program. (c)
- Issue draft reports and prepare final reports for each region and State for consideration by the management review board and signature by the DEDS. (d)
- Participate on management review boards. (e)
- Coordinate with Agreement States to staff IMPEP reviews and the management review board with appropriate Agreement State representatives. (f)

### **General Counsel** (033)

Participates on management review boards.

**Director, Office for Analysis and  
Evaluation of Operational  
Data (AEOD)**  
(034)

Participates on management review boards.

**Regional Administrators**  
(035)

- Implement the IMPEP within their respective regions. (a)
- Provide staffing support for review teams, as needed. (b)

**Applicability**  
(5.6-04)

The policy and guidance in this directive and handbook apply to all NRC employees who are responsible for and participate in the IMPEP.

**Handbook**  
(5.6-05)

Handbook 5.6 describes the performance indicators that will be used, the performance standards against which these indicators will be evaluated, and the frequency and process sequence to be employed. The "Glossary" in the handbook also defines some of the key terminology.

**References**  
(5.6-06)

- Code of Federal Regulations*, 10 CFR 35.2, "Purpose and Scope."  
NRC Inspection Manual, Chapter 1245, "Inspector Qualifications."  
—, Chapter 1246, "Materials License Reviewer Qualification."  
—, Chapter 2800, "Materials Inspection Program."

# ***Integrated Materials Performance Evaluation Program (IMPEP)***

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## ***Handbook 5.6***



## Contents

### Part I

<b>Evaluation</b> .....	1
Evaluation Frequency (A) .....	1
Evaluation Process Sequence (B) .....	1

### Part II

<b>Performance Indicators</b> .....	3
General (A) .....	3
Programmatic Indicators (B) .....	4
Performance Indicator 1—Status of Materials Inspection Program (1) .....	4
Performance Indicator 2—Technical Staffing and Training (2) .....	4
Performance Indicator 3—Technical Quality of Licensing Actions (3) .....	5
Performance Indicator 4—Technical Quality of Inspections (4) .....	6
Performance Indicator 5—Response to Incidents and Allegations (5) .....	6

### Part III

<b>Evaluation Criteria</b> .....	7
Indicator 1—Status of Materials Inspection Program (A) .....	7
Satisfactory (1) .....	7
Satisfactory With Recommendations for Improvement (2) .....	8
Unsatisfactory (3) .....	8
Category N (4) .....	8
Indicator 2—Technical Staffing and Training (B) .....	8
Satisfactory (1) .....	8
Satisfactory With Recommendations for Improvement (2) .....	9
Unsatisfactory (3) .....	10
Category N (4) .....	10
Indicator 3—Technical Quality of Licensing Actions (C) .....	11
Satisfactory (1) .....	11
Satisfactory With Recommendations for Improvement (2) .....	11
Unsatisfactory (3) .....	11

## Contents

### Part III (continued)

Category N (4) .....	12
Indicator 4—Technical Quality of Inspections (D) .....	12
Satisfactory (1) .....	12
Satisfactory With Recommendations for Improvement (2) .....	12
Unsatisfactory (3) .....	13
Category N (4) .....	13
Indicator 5—Response to Incidents and Allegations (E) .....	13
Satisfactory (1) .....	13
Satisfactory With Recommendations for Improvement (2) .....	14
Unsatisfactory (3) .....	14
Category N (4) .....	14

### Part IV

Programmatic Assessment .....	15
General (A) .....	15
Findings for Agreement State Programs (B) .....	16
Finding 1—Adequate to Protect Public Health and Safety and Compatible (1) .....	16
Finding 2—Adequate to Protect Public Health and Safety and Not Compatible (2) .....	16
Finding 3—Adequate, But Needs Improvement and/or Not Compatible (3) ..	16
Finding 4—Inadequate to Protect Public Health and Safety and/or Not Compatible (4) .....	17
Findings for NRC Regional Programs (C) .....	17
Glossary .....	18

## Part I

### Evaluation

#### Evaluation Frequency (A)

NRC will review the performance of each region and each Agreement State on a periodic basis. The schedule for conducting each regional or Agreement State visit will be developed by the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of State Programs (OSP) in coordination with the regions and States. Approximately 10 to 12 reviews will be scheduled in most years. Under normal conditions, this would allow evaluations of NRC regions every 2 years, and Agreement States every 3 years. However, these frequencies can be adjusted upward or downward on the basis of the findings from the last review or in light of significant program changes in a particular State or region. In addition, this schedule provides for review of certain NMSS functions on an as-needed basis.

#### Evaluation Process Sequence (B)

The typical evaluation process for the review team is summarized below:

- Develop review schedule for the year. (1)
- Assemble and train team members. (2)
- Designate team leader and members for each scheduled review. (3)
- Review completed licensing actions on an ongoing basis to help focus reviews. (4)
- Transmit questionnaires to affected regions and States. (5)

## Evaluation Process Sequence (B) (continued)

- Provide copies of questionnaire responses and most current performance data summary to team members. (6)
- Assess a sample of inspections at different types of licensed facilities by accompanying the inspectors. (7)
- Conduct onsite portion of IMPEP, using the criteria specified in this handbook and any performance review procedures in conjunction with any customized review elements. (8)
- Prepare draft IMPEP report, with recommendation for overall performance evaluation, for office director's signature. (9)
- Issue the draft report. (10)
- Review and consider written comments received from the regions or Agreement States. (11)
- Prepare proposed final report for consideration by the management review board (MRB). (12)
- Conduct MRB meeting. (13)
- Issue final reports, include the written responses received and any changes to the report based on consideration of the written responses, and a summary of MRB findings. (14)

## Part II

### Performance Indicators

#### General (A)

A description of the performance indicators to be evaluated for each region and each Agreement State is given in (B) of this part. The evaluation criteria (i.e., performance standards) against which these indicators are to be assessed are described in Part III of this handbook. These reviews determine program adequacy and compatibility in the Agreement States and are instrumental in improving State and NRC regional performance, thus ultimately leading to improved licensee performance. (1)

The performance indicators should be used as a starting point of inquiry. This, in turn, should lead program evaluators to a more careful examination of the underlying conditions, or root causes, of potential problem areas. Evaluators may find correlations exists between two or more performance indicators. In this situation, the impact of individual performance symptoms could be compounded when combined with others. Conversely, a regulatory program measured as potentially weak against one particular indicator, nonetheless, could be rated as strong overall if there are sufficient mitigating factors with respect to other indicators. (2)

Certain non-reactor functions that continue to be conducted from NRC headquarters, such as fuel cycle licensing, uranium and thorium milling, sealed source and device reviews, low-level radioactive waste disposal licensing, and safeguards activities are excluded from this set of indicators because they are not common to regional and Agreement State activities. These may be incorporated, as appropriate, as noncommon indicators contributing to a performance-based evaluation of a program. (3)



## **General (A) (continued)**

For Agreement States, the noncommon indicators will be legislative and legal authority, compatibility, uranium and thorium milling, sealed source and device reviews, and low-level radioactive waste disposal licensing. (4)

This exclusion does not prohibit the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of State Programs (OSP) from using other indicators and/or performance standards to supplement those described in this directive. (5)

## **Programmatic Indicators (B)**

### **Performance Indicator 1—Status of Materials Inspection Program (1)**

Periodic inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety practices. The frequency of inspections is specified in the NRC Inspection Manual, Chapter 2800, and is dependent on the amount and the kind of material, the type of operation licensed, and the results of previous inspections. There must be a capability for maintaining and retrieving statistical data on the status of the compliance program. Information regarding the number of overdue inspections is a significant measure of the status of an Agreement State's or NRC region's materials inspection program, although reviews also should examine specific cases where the inspection frequency has been significantly exceeded (i.e., by more than 100 percent). The terms "materials inspection" and "overdue inspection" are defined in the Glossary to this handbook.

### **Performance Indicator 2—Technical Staffing and Training (2)**

The ability to conduct effective licensing and inspection programs is largely dependent on having a sufficient number of experienced, knowledgeable, well-trained technical personnel. Under certain conditions, staff turnover could have an adverse effect on the implementation of these programs; thus it could affect public health and safety. (a)

For this performance indicator, qualitative as well as quantitative measures must be considered. In particular, the reason for apparent trends in staffing must be explored. Is the rate of turnover and the



## Programmatic Indicators (B) (continued)

### Performance Indicator 2—Technical Staffing and Training (2) (continued)

degree of understaffing symptomatic of a chronic problem or is it merely a short-term phenomenon? Why is turnover high? What steps are being taken to address this? What effect is it having on other performance indicators? (b)

Review of staffing also requires a consideration and evaluation of the levels of training and qualification of the technical staff. New hires need to be technically qualified. Professional staff normally should have bachelor's degrees or equivalent training in the physical and/or life sciences. Training requirements for NRC inspectors are specified in the NRC Inspection Manual, Chapter 1245, and for NRC materials licensing reviewers, in the NRC Inspection Manual, Chapter 1246. The requirements include a combination of classroom requirements and practical on-the-job training. Some NRC regions impose additional requirements on certain license reviewers or inspectors, depending on their individual responsibilities and the types of licenses they review and/or inspect. (c)

In addition, the qualification process for NRC materials program inspectors includes demonstration of knowledge of relevant sections of the *Code of Federal Regulations*, completion of a qualifications journal, and appearance before a qualification board. Although Agreement States need not follow the NRC Inspection Manual, Chapters 1245 and 1246, they should have a program for training and qualification of personnel, and it should be adhered to in Agreement State programs. The evaluation standard measures the overall quality of training available to, and taken by, materials program personnel. (d)

### Performance Indicator 3—Technical Quality of Licensing Actions (3)

An acceptable program for licensing radioactive material includes preparation and use of internal licensing guides and policy memoranda to ensure technical quality in the licensing program (when appropriate, NRC guidance may be used); prelicensing inspection of complex facilities; and supervisory review, when appropriate. (a)

## Programmatic Indicators (B) (continued)

### Performance Indicator 3—Technical Quality of Licensing Actions (3) (continued)

This performance indicator evaluates the technical quality of the licensing program on the basis of an in-depth onsite review of a representative cross-section of licensing action for various types of licenses. Technical quality includes not only the review of completed actions, but also an examination of any renewals that have been pending for more than a year because the failure to act on such requests may have health and safety implications. To the extent possible, the onsite review also should capture a representative cross-section as completed by each of the reviewers in the region or State. (b)

### Performance Indicator 4—Technical Quality of Inspections (4)

This performance indicator provides the qualitative balance to Performance Indicator 1, which looks at the status of the inspection program on a quantitative basis. Review team members will accompany a sampling of inspectors at different types of licensed facilities to evaluate the knowledge and capabilities of regional and Agreement State inspectors. These accompaniments will usually occur at a time other than the onsite review of the region or Agreement State to afford the review team sufficient time to observe inspectors at different types of licensee facilities. These reviews focus on the scope, completeness, and technical accuracy of completed inspections and related documentation. Review teams will conduct in-depth, onsite reviews of a cross-section of completed inspection reports performed by different inspectors. In addition, review teams will verify that supervisors generally accompany inspectors on an annual basis to provide management quality assurance.

### Performance Indicator 5—Response to Incidents and Allegations (5)

The quality, thoroughness, and timeliness of the NRC or Agreement State response to incidents, alleged incidents, and other allegations of safety concerns can have a direct bearing on public health and safety. A careful assessment of incident response and allegation investigation procedures, actual implementation of these procedures, internal and external coordination, and investigative and followup procedures will be a significant indicator of the overall quality of the program.

## Part III

### Evaluation Criteria

NRC regions and Agreement States will be evaluated in their ability to conduct effective licensing and inspection programs using the performance indicators described in Part II of this handbook. The evaluation criteria for each performance indicator are given below.

#### Indicator 1—Status of Materials Inspection Program (A)

##### Satisfactory (1)

- Core licensees (those with inspection frequencies of 3 years or less) are inspected at regular intervals in accordance with frequencies prescribed in NRC Inspection Manual, Chapter 2800. (a)
- Deviations from these schedules are normally coordinated between working staff and management. Deviations are generally the result of joint decisions that consider the risk of licensee operation, past licensee performance, and the need to temporarily defer the inspection(s) to address more urgent or more critical priorities. (b)
- There is clear evidence of an organized "get-well" plan to reschedule any missed or deferred inspections. (c)
- Inspections of new licensees are generally conducted within 6 months of license approval, or in accordance with NRC Inspection Manual, Chapter 2800, Section 04-03, for those new licensees not possessing licensed material. (d)
- A large majority of the inspection findings are communicated to licensees in a timely manner (30 calendar days as specified in NRC Inspection Manual, Chapter 0610-10). (e)

## Indicator 1 — Status of Materials Inspection Program (A) (continued)

### Satisfactory With Recommendations for Improvement (2)

- More than 10 percent of the core licensees are inspected at intervals that exceed the NRC Inspection Manual, Chapter 2800, frequencies by more than 25 percent. (a)
- Inspections of new licensees are frequently not conducted within 6 months of license approval. (b)
- Some of the inspection findings are delayed, or not communicated to licensees with 30 days. (c)

### Unsatisfactory (3)

- More than 25 percent of the core licensees are inspected at intervals that exceed that NRC Inspection Manual, Chapter 2800, frequencies by more than 25 percent. (a)
- Inspections of new licensees are frequently delayed, as are the inspection findings. (b)

### Category N (4)

- Special conditions exist that provide adequate justification for withholding a rating. For example, an unforeseen event or emergency with significant health and safety consequences may have required a temporary diversion of resources from the core inspection program. However, these programmatic adjustments are well thought out and properly coordinated with the Office of Nuclear Material Safety and Safeguards (NMSS) or Agreement State management.

## Indicator 2 — Technical Staffing and Training (B)

### Satisfactory (1)

Review indicates implementation of a well-conceived and -balanced staffing strategy throughout the assessment period and demonstrates the qualifications of the technical staff. This is indicated by the presence of most of the following features:

## Indicator 2—Technical Staffing and Training (B) (continued)

### Satisfactory (1) (continued)

- Balance in staffing the licensing and inspection programs (a)
- Few, if any, vacancies, especially at the senior-level positions (b)
- Prompt management attention and review, such as development of a corrective action plan to address problems in high rates of attrition or positions being vacant for extended periods (c)
- Qualification criteria for hiring new technical staff established and followed (Staff would normally be expected to have bachelor's degrees or equivalent training in the physical and/or life sciences. Senior personnel should have additional training and experience in radiation protection, commensurate with the types of licenses they issue or inspect.) (d)
- License reviewers and inspectors trained and qualified in a reasonable time period<sup>1</sup> (e)
- Management commitment to training clearly evident (f)

### Satisfactory With Recommendations for Improvement (2)

Review determines the presence of some of the following conditions:

- Some staff turnover that could adversely upset the balance in staffing the licensing and inspection programs (a)
- Some vacant positions not readily filled (b)
- Some evidence of management attention or actions to deal with staffing problems (c)
- Some of the licensing and inspection personnel not making prompt progress in completing all of the training and qualification requirements (d)

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<sup>1</sup> For the regions, this means there has been, and continues to be, a clear effort to adhere to the requirements and conditions specified in NRC Inspection Manual, Chapters 1245 and 1246, and the applicable qualifications journals, or to receive equivalent training elsewhere. For the Agreement States, equivalent requirements should be in place and followed.



## Indicator 2—Technical Staffing and Training (B) (continued)

### Satisfactory With Recommendations for Improvement (2) (continued)

- The training and qualification standards include areas needing improvement (e)
- Some of the new staff hired with little education or experience in physical and/or life sciences, or materials licensing and inspection (f)

### Unsatisfactory (3)

Review determines the presence of chronic or acute problems related to some of the following conditions, which cause concerns about their likely effects on other performance indicators:

- Significant staff turnover relative to the size of the program (a)
- Most vacant positions not filled for extended periods (b)
- Little evidence of management attention or actions dealing with staffing problems (c)
- Most of the licensing and inspection personnel not making prompt progress in completing all of the training and qualification requirements (d)
- New staff members hired without having scientific or technical backgrounds that would equip them to receive health physics training (e)

### Category N (4)

Special conditions exist that provide justification for withholding a rating. For example, there has been a substantial management effort to deal with staffing problems. NMSS or the Office of State Programs (OSP) has been kept informed of the situation and discernable recent progress is evident.



### Indicator 3—Technical Quality of Licensing Actions (C)

#### Satisfactory (1)

- Review of completed licenses and a representative sample of licensing files indicates that license reviews are generally thorough, complete, consistent, and of acceptable technical quality. (a)
- Health and safety issues are properly addressed. (b)
- License reviewers usually have the proper signature authority for the cases they review. (c)
- Special license tiedown conditions are usually stated clearly and are inspectable. (d)
- Deficiency letters are well written and used at the proper time. (e)
- Reviews of renewal applications demonstrate thorough analysis of a licensee's inspection and enforcement history. (f)
- Applicable guidance documents are available to reviewers in most cases and are generally followed. (g)
- No potentially significant health and safety issues can be linked to licensing practices. (h)

#### Satisfactory With Recommendations for Improvement (2)

Review indicates that some licensing actions do not fully address health and safety concerns or indicates repeated examples of problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.

#### Unsatisfactory (3)

Review indicates that licensing actions frequently fail to address important health and safety concerns or indicates chronic problems with regard to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.

### Indicator 3—Technical Quality of Licensing Actions (C) (continued) .

Category N (4)

Not applicable.

### Indicator 4—Technical Quality of Inspections (D)

Satisfactory (1)

- Review team members accompanying a sample inspectors combined with an onsite review of a representative cross-section of completed inspection files indicates inspection findings are usually well founded and well documented throughout the assessment. (a)
- A review of inspector field notes or completed reports indicates that most inspections are complete and reviewed promptly by supervisors or management. (b)
- Procedures are in place and normally used to help identify root causes and poor licensee performance. (c)
- In most instances, followup inspections address previously identified open items and/or past violations. (d)
- Inspection findings generally lead to appropriate and prompt regulatory action. (e)
- Supervisors accompany nearly all inspectors on an annual basis. (f)

Satisfactory With Recommendations for Improvement (2)

- Review indicates that some inspections do not address potentially important health and safety concerns or it indicates periodic problems with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency. (a)
- Review indicates that findings in inspection reports and inspection files are, on occasion, not well founded or well documented. (b)

## Indicator 4—Technical Quality of Inspections (D) (continued)

### Satisfactory With Recommendations for Improvement (2) (continued)

- Review does not demonstrate an appropriate level of management review. (c)
- Supervisors accompaniment of inspectors are not performed systematically. (d)
- Followup actions to inspection findings are often not timely. (e)

### Unsatisfactory (3)

- Review indicates that inspections frequently fail to address potentially important health and safety concerns or it indicates chronic problems exist with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency. (a)
- Supervisors infrequently accompany inspectors. (b)
- Followup actions to inspection findings are often not timely and appropriate. (c)

### Category N (4)

- Not applicable.

## Indicator 5—Response to Incidents and Allegations (E)

### Satisfactory (1)

- Incident response and allegation procedures are in place and followed in nearly all cases. (a)
- Actions taken are appropriate, well coordinated, and timely in most instances. (b)
- Level of effort is usually commensurate with potential health and safety significance of incident. (c)

## Indicator 5—Response to Incidents and Allegations (E) (continued)

### Satisfactory (1) (continued)

- Investigative procedures are appropriate for incident. (d)
- Corrective (enforcement or other) actions are adequately identified to licensees promptly and appropriate followup measures are taken to ensure prompt compliance. (e)
- Followup inspections are scheduled and completed, if necessary. (f)
- Notification to NMSS, the Office for Analysis and Evaluation of Operational Data, or OSP, and others as may be appropriate, is usually performed in a timely fashion. (g)

### Satisfactory With Recommendations for Improvement (2)

- Incident response and allegation procedures are in place but occasionally not practiced in a detailed fashion. (a)
- Performance is marginal in terms of resolving potential public health and safety issues, but not as well coordinated, complete, or timely as would be required under the "Satisfactory" performance standard. (b)

### Unsatisfactory (3)

Review indicates frequent examples of response to incidents or allegations to be incomplete, inappropriate, poorly coordinated, or not timely. As a result, potential health and safety problems persists.

### Category N (4)

Not applicable.

## Part IV

# Programmatic Assessment

### General (A)

A management review board (MRB) will make the overall assessment of each NRC region's or Agreement State's program on the basis of the proposed final report and recommendations prepared by the team that conducted the review of that region or State, including any unique circumstances as well as noncommon indicators. (1)

The MRB will consist of a group of senior NRC managers, or their designees, to include the: (2)

- Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (a)
- Director, Office of Nuclear Material Safety and Safeguards (b)
- Director, Office of State Programs (c)
- Director, Office for Analysis and Evaluation of Operational Data (d)
- General Counsel (e)

The Agreement States also will be invited to nominate a representative to participate in MRB meetings, as a nonvoting Agreement State liaison. In this capacity, the State representative would have full authority to receive applicable documentation and engage in all MRB discussions except for any that might involve the Agreement State liaison's own State. The Agreement State liaison would not have voting authority; this function is reserved solely by NRC. (3)



## General (A) (continued)

For an NRC region, the MRB will only assess the adequacy of the program to protect public health and safety. The nature of NRC findings regarding NRC's Agreement State review process is described below. (4)

## Findings for Agreement State Programs (B)

### Finding 1—Adequate to Protect Public Health and Safety and Compatible (1)

- If NRC staff find that a State program has met all the Agreement State program review criteria or that only minor deficiencies exist, the Commission will find that the State's program is adequate to protect the public health and safety. (a)
- If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program will be found compatible. (b)

### Finding 2—Adequate to Protect Public Health and Safety and Not Compatible (2)

- If NRC finds that a State program has met all the Agreement State program review criteria or that only minor deficiencies exist, the Commission will find that the State's program is adequate to protect the public health and safety. (a)
- If NRC determines that a State has failed to adopt a necessary item of compatibility within the period of time specified by implementing procedures for NRC's compatibility policy statement (i.e., more than minor compatibility discrepancies), the program would be found not compatible. (b)

### Finding 3—Adequate, But Needs Improvement and/or Not Compatible (3)

- If NRC finds that a State's program protects public health and safety, but is deficient in meeting some of the review criteria, NRC may find that the State's program is adequate, but needs improvement. NRC would consider, in its determination plans,



## Findings for Agreement State Programs (B) (continued) •

### Finding 3—Adequate, But Needs Improvement and/or Not Compatible (3) (continued)

which deficiencies noted during the review that the State has to address. (a)

- In cases where less significant State deficiencies previously identified have been uncorrected for a significant period of time, NRC also may find that the program is adequate but in need of improvement. (b)
- If NRC determines that a State has failed to adopt a necessary item of compatibility within the period of time specified by implementing procedures for NRC's compatibility policy statement, the program would be found not compatible. (c)

### Finding 4—Inadequate to Protect Public Health and Safety and/or Not Compatible (4)

- If NRC finds that a State's program is significantly deficient in some or all the review criteria, NRC would find that the State's program is not adequate to protect the public health and safety. (a)
- If NRC determines that a State has failed to adopt a necessary item of compatibility within the period of time specified by implementing procedures for NRC's compatibility policy statement, the program would be found not compatible. (b)

## Findings for NRC Regional Programs (C)

An MRB's findings for regional programs will be the same as those listed above for Agreement States with the exclusion of the findings for compatibility.

## Glossary

It is necessary to note that some Agreement States or NRC regions may not define these terms identically. In such cases, the review team will highlight any differences in its review, but draw its conclusions and make its assessments on the basis of the definitions used by that State or region at the time of the review.

**Allegation.** A declaration, statement, or assertion of impropriety or inadequacy associated with regulated activities, the validity of which has not been established. This term includes all concerns identified by sources such as the media, individuals, or organizations, and technical audit efforts from Federal, State, or local government offices regarding activities at a licensee's site. Excluded from this definition are matters being handled by more formal processes such as 10 CFR 2.206 petitions, hearing boards, appeal boards, and so forth.

**Incident.** An event that may have caused or threatens to cause conditions described in 10 CFR 20.2202 (old 20.403), 10 CFR 30.50, 10 CFR 40.60, 10 CFR 70.50, or the equivalent State regulations.

**Materials Inspection.** The definitions in 10 CFR 170.3, and in NRC Inspection Manual, Chapter 2800, Sections 03.03 and 07.01, should be used to determine what constitutes an inspection. In addition, Agreement State hand-delivery of new licenses may constitute initial inspections. The term includes both routinely scheduled and reactive inspections.

**Materials Licensing Action.** Reviews of applications for new byproduct materials licenses, license amendments, renewals, and license terminations.

**Overdue Inspections.** Currently, NRC defines this term based on guidance in NRC Inspection Manual, Chapter 2800, especially Sections 04.03 (a) and 05.01 through 05.04. Many States use different definitions. For purposes of this directive, a materials license will be considered overdue for inspection in the following cases:

## Glossary (continued)

- A new licensee that possesses licensed material has not been inspected within 6 months of receipt of licensed material, within 6 months of beginning licensed activities, or within 12 months of license issuance, whichever comes first.
- An existing core license is more than 25 percent beyond the interval defined in NRC Inspection Manual, Chapter 2800, Enclosure 1. An existing non-core license is more than 1 year beyond the interval. (An inspection will not be considered overdue if the inspection frequency has been extended in accordance with NRC Inspection Manual, Chapter 2800, Section 05.01, based on good licensee performance.

Determinations of overdue inspections will not be based on any inspection frequencies established by States or regions if those frequencies are more stringent than those contained in NRC Inspection Manual, Chapter 2800. The frequencies provided in NRC Inspection Manual, Chapter 2800, will generally be used as the yardstick for determining if an inspection is overdue.

of the Atomic Energy Act of 1954, as amended, with NRC, to regulate, inspect or otherwise exercise control of operations, with respect to source and product material, for disposal of that material at the LLW disposal facility at Richland, Washington.

Prior to the issuance of the proposed renewal, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license renewal falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, American Ecology Corporation, 120 Franklin Road, Oak

Ridge, TN, 37830, ATTN: Mr. Arthur J. Palmer, III, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for license renewal is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 19th day of October 1995.

For the U.S. Nuclear Regulatory Commission,

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

(FR Doc. 95-26418 Filed 10-24-95; 8:45 am)

BILLING CODE 7530-01-0

[Docket No. 95-346]

Toledo Edison Company, et al.; Davis-Besse Nuclear Power Station, Unit No. 1; Amendment to Facility Operating License Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Toledo Edison Company, Centenor Service Company, and the Cleveland Electric Illuminating Company (the licensees) to withdraw its August 18, 1995, application for proposed amendment to Facility Operating License No. NPF-3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have revised Technical Specification Section 3/4.7.5.1, "Ultimate Heat Sink" to increase the maximum temperature from less than or equal to 85 °F to less than or equal to 90 °F.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on August 24, 1995 (60 FR 44091). However, by letter dated September 12, 1995, the licensees withdrew the proposed change.

For further details with respect to this action, see the request for enforcement discretion dated August 17, 1995, the application for amendment dated August 18, 1995, and the licensees' letter dated September 12, 1995, which withdrew the application for license amendment. The above discussions are

available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 27th day of September 1995.

For the Nuclear Regulatory Commission,

Linda L. Gendron,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

(FR Doc. 95-26419 Filed 10-24-95; 8:45 am)

BILLING CODE 7530-01-0

### Evaluation of Agreement State Radiation Control Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim implementation of the Integrated Materials Performance Evaluation Program pending final Commission approval of the Statement of Principles and Policy for the Agreement State Program and the Policy Statement on Adequacy and Compatibility of Agreement State Programs.

SUMMARY: The Nuclear Regulatory Commission (NRC) is implementing, on an interim basis, the Integrated Materials Performance Evaluation Program (IMPEP) to be used in the evaluation of Agreement State Programs. To effect this implementation, the NRC will suspend relevant portions of the May 28, 1992 General Statement of Policy "Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992." Management Directive 5.6, Integrated Materials Performance Evaluation Program, will be used as the implementing procedure.

The NRC will implement IMPEP in the evaluation of Agreement State Programs until such time as final implementing procedures for the policy statements: "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs," and any revisions to these policy statements are approved by the Commission (See 60 FR 39484, August 2, 1995). Conforming revisions to IMPEP in connection with the completion of work on these two policy statements will be done as appropriate. IMPEP will then be implemented on a permanent basis and the 1992 policy statement on "Guidelines for NRC review of



Agreement State Radiation Control Programs" will be rescinded.

**EFFECTIVE DATE:** October 1, 1995.

**ADDRESSES:** Interested persons may obtain a single copy of Management Directive 5.6 by writing Mr. George Deegan, U.S. Nuclear Regulatory Commission, Mail Stop T8-F5, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen N. Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Document Control Desk, P1-37, Washington, DC 20555, telephone (301)-415-2320.

**SUPPLEMENTARY INFORMATION:** In 1994, NRC proposed a process to evaluate NRC Regional programs and Agreement State Radiation Control Programs, that regulate the use of radioactive materials, in an integrated manner using common performance indicators. The staff conducted a pilot program in 1994 with three Agreement States and two NRC Regional materials programs using the draft Management Directive 5.6, "Integrated Materials Performance Evaluation Program" (IMPEP). On June 27, 1995, the Commission approved implementation of IMPEP on an interim basis. The draft Management Directive is currently being prepared in final form.

Five common performance indicators, as described in Management Directive 5.6 will be used to determine adequacy of materials programs. Additionally, Compatibility of Regulations and Legal Authority (including enforcement) will be addressed as non-common indicators. Existing procedures for compatibility determinations (Office of State Programs B.7 Procedure) will continue to be utilized in connection with NRC findings on Compatibility of Regulations under IMPEP until the final implementing procedures for the policy statements: "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs," and any revisions to these policy statements are approved by the Commission. The interim implementation of IMPEP will require the partial suspension of the May 28, 1992 General Statement of Policy "Guidelines for NRC Review of Agreement State Radiation Control Programs, 1992" (57 FR 22495). The NRC will only continue to apply the single program element of the 1992 General Statement of Policy entitled "Legislation and Regulations." NRC will rescind the entire 1992 General Statement of Policy upon final approval and implementation of the "Statement of Principles and Policy for the

Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs."

Low-level waste, uranium mill or sealed source and service programs in Agreement States will not be reviewed as common performance indicators since NRC Headquarters conducts these NRC licensing activities. A performance-based evaluation approach, similar to that developed for the common performance indicators, will be utilized in reviews of NRC and Agreement State programs in these areas.

The NRC will review the performance of each Agreement State on a periodic basis. Each Agreement State evaluation will be coordinated with the States. For those Agreement States with program findings that are both adequate and compatible, the staff will consider extending the current review cycle of 2 years to 3-4 years.

Dated at Rockville Maryland this 19th day of October, 1995.

For the Nuclear Regulatory Commission,  
John C. Hoyle,

Secretary of the Commission.

(FR Doc 95-26415 Filed 10-24-95, 8:45 am)

BILLING CODE 7560-01-P

## PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Focus Groups and Surveys

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget ("OMB") approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through three focus group meetings and a small of number of surveys, is to help the PBGC evaluate its toll-free telephone service providing basic information about the PBGC insurance program.

**DATES:** The PBGC is requesting that OMB approve this request by November 1, 1995.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty

Corporation, 725 17th Street, NW., Room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202-325-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The PBGC has established a toll-free telephone service that gives the public general information concerning the PBGC's insurance program. Use of the toll-free service by the general public has been significantly below expectations.

The PBGC plans to conduct a series of three focus groups of 15 participants each, and to distribute survey questionnaires to the focus group participants and to 150 other individuals. (The 45 focus group participants and 150 survey respondents will be selected largely from the 41,000,000 participants and beneficiaries in covered pension plans.) The purpose of the focus groups and survey questionnaires is to evaluate the PBGC's toll-free service and to assist the PBGC in making necessary improvements to that service.

The PBGC estimates that the total annual burden of this collection of information will be 147.5 hours. The PBGC is requesting that OMB approve this collection on an emergency basis so that needed improvements in the toll-free service can be made as soon as possible.

Issued at Washington, D.C., this 23rd day of October, 1995.

Martin Slat,

Executive Director, Pension Benefit Guaranty Corporation.

(FR Doc 95-26624 Filed 10-24-95, 8:45 am)

BILLING CODE 7560-01-P

**UNITED STATES NUCLEAR REGULATORY COMMISSION**  
**RULES and REGULATIONS**

TITLE 10, CHAPTER 1, CODE OF FEDERAL REGULATIONS—ENERGY

**COMMISSION NOTICES**  
**POLICY STATEMENTS**  
**AGREEMENT STATES**

48 FR 7540

Published 1/23/81

Effective 1/23/81

Amended by PS published 7/16/81  
(48 FR 36969) and 7/21/83 (48 FR  
33376)

**Criteria for Guidance of States and  
NRC in Discontinuance of NRC  
Regulatory Authority and Assumption  
Thereof by States Through Agreement**

**AGENCY: U.S. Nuclear Regulatory  
Commission.**

**ACTION: Statement of Policy.**

**SUMMARY:** The Nuclear Regulatory Commission has revised its statement of policy regarding criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption of regulatory authority by States through agreement. This action is necessary to make editorial changes to update the policy statement, to allow States to enter into agreements for low-level waste only, and to incorporate the provisions and requirements of the Uranium Mill Tailings Radiation Control Act of 1978. Adoption of this policy will allow interested States to enter into agreements with the NRC and regulate low-level waste sites only. Additionally, those States that meet the criteria for the regulation of uranium mills and tailings may exercise regulatory authority over these sources as provided by the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

The revised statement of policy reflects the following principal changes:

1. Modification of Criterion 27 to allow a State to seek an agreement for the regulation of low-level waste as a separate category.

2. Inclusion of additional criteria for States wishing to continue regulating uranium and thorium processors and mill tailings after November 8, 1981.

3. Editorial and clarifying changes to make the statement current.

**DATES:** This policy statement is effective January 23, 1981.

**FOR FURTHER INFORMATION CONTACT:**  
John F. Kendig, Office of State Programs,  
U.S. Nuclear Regulatory Commission,  
Washington, D.C. 20555, telephone: 301-  
482-7787.

**SUPPLEMENTARY INFORMATION:**

1. These criteria were developed to implement a program, authorized by

Pub. L. 95-373 which was enacted in the form of a new section to the Atomic Energy Act (Section 274) and approved by the President on September 23, 1978 and amended by Pub. L. 95-604 approved November 8, 1978. These criteria are intended to indicate factors which the Commission intends to consider in approving new or amended agreements. They are not intended to limit Commission discretion in viewing individual agreements or amendments. In accordance with these statutory provisions, when an agreement between a State and the NRC is effected, the Commission will discontinue its regulatory authority within that State over one or more of the following materials: byproduct material as defined in Section 11e(1) of the Act (radioisotopes), byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes), source material (uranium and thorium), special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings.

2. An agreement may be effected between a State and NRC: (1) upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect the 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 materials; and (2) after a finding by the Commission that the State program is in accordance with the requirements of subsection c 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 the public health and safety with respect to the materials covered by the proposed agreement. It is also necessary that the State have enabling legislation authorizing its Governor to enter into such an agreement.

3. The original criteria were published on March 24, 1981 (28 FR 2537) after discussions with various State officials and other State representatives, to provide guidance and assistance to the States and the AEC (now NRC) in developing a regulatory program which

would be compatible with that of the NRC. The criteria were circulated among States, Federal agencies, labor and industry, and other interested groups for comment.

4. The criteria require that the State authority consider the total accumulated occupational radiation exposure of individuals. To facilitate such an approach, it is the view of the NRC that an overall radiation protection program is desirable. The maximum scope of

each State's radiation protection program is not, however, a necessary or appropriate subject for coverage in the criteria. Consequently, the criteria are silent on the question of whether a State should have a total regulatory program covering all sources of radiation, including those not subject to control by the NRC under the Atomic Energy Act, such as x-rays, radium, accelerators, etc.

5. These revised criteria provide for entering into an agreement for a separate category of materials, namely, low-level waste material in permanent disposal facilities. They also provide new criteria for States wishing to continue regulating uranium and thorium processing and the wastes resulting therefrom under the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604) after November 8, 1981. The revised criteria also contain a number of editorial changes such as changing AEC to NRC where appropriate to conform to present practice and law.

6. Inquiries about details of the criteria or other aspects of the NRC Federal-State Relations Program should be addressed to the Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

**Criteria<sup>1</sup>**

**Objectives**

1. **Protection.** A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

**Radiation Protection Standards<sup>2</sup>**

<sup>1</sup> The criteria were first adopted in February 1981 (28 FR 2537, March 24, 1981, and amended in November 1981 (30 FR 12064, December 4, 1981). Minor editorial changes were made in June 1982 to reflect the authority of the U.S. Department of Transportation and Organization change to NRC.

<sup>2</sup> Suggested State regulations and State legislation will give content to all criteria enumerated.



## POLICY STATEMENTS

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation, which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by Part 20 of the NRC regulations based on officially approved radiation protection guides.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals including that from sources which are not regulated by it.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

7. *Instruction.* Persons working in or frequenting restricted areas<sup>a</sup> shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, section 19.16 and to be represented during inspections as specified in section 19.14 of 10 CFR 19.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

### 9. Radioactive Waste Disposal.

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer

and manifest system) shall be in accordance with 10 CFR 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97-425).

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposal of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases or circumstances, the State regulatory

authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

### Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants; this guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

### Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine, and to assist in obtaining,

<sup>a</sup> "Restricted area" means any area access to which is controlled by the licensee for the purpose of radiation protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any area used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

## POLICY STATEMENTS

assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations.

Items which should be evaluated are:

- (a) Proposed activities;
- (b) Scope of proposed action;
- (c) Specific activities to be conducted;
- (d) Administrative procedures;
- (e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;

(f) Licensee audits and inspections;

(g) Radiation safety training programs for workers;

(h) Radiation safety program, control and monitoring;

(i) Restricted area markings and access control;

(j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;

(k) Environmental monitoring;

(l) Emergency procedures,

radiological:

(m) Product transportation; and

(n) Site and physical decommissioning procedures, other than tailings.

(o) Employee exposure data and bioassay programs.

b. *Environmental Assessment*

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

(a) Topography;

(b) Geology;

(c) Hydrology and water quality;

(d) Meteorology;

(e) Background radiation;

(f) Tailings retention system;

(g) Interim stabilization, reclamation,

and Site Decommissioning Program;

(h) Radiological Dose Assessment;

(1) Source terms

(2) Exposure pathway

(3) Dose commitment to individuals

(4) Dose commitment to populations

(5) Evaluation of radiological impacts

to the public to include a determination of compliance with State and Federal regulations and comparisons with background values

(6) Occupational dose

(7) Radiological impact to biota other than man

(8) Radiological monitoring programs, pre-occupational and operational

(i) Impacts to surface and groundwater, both quality and quantity;

(j) Environmental effects of accidents; and

(k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:

(a) Ecology;

(b) Environmental effects of site preparation and facility construction on environment and biota;

(c) Environmental effects of use and

discharge of chemicals and fuels; and

(d) Economic and social effects.

c. *Inspections*

(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in-plant safety review. The principal items recommended for inspection are:

(a) Administration;

(b) Mill circuit, including any

additions, deletions, or circuit changes;

(c) Accidents/incidents;

(d) Part 19 or equivalent requirements of the State;

(e) Action taken on previous findings;

(f) A mill tour to determine

compliance with regulations, and license conditions;

(g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);

(h) Records;

(i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.

(j) Effluent and environmental monitoring;

(k) Training programs;

(l) Transportation and shipping;

(m) Internal review and audit by management;

(n) Exit interview; and

(o) Final written report documenting the results of the inspection and findings on each item.

(2) In addition, the inspector should perform the following:

(a) Independent surveys and sampling.

(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A complete inspection should be performed at least once per year.

d. *Operational Data Review*

(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.

(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

### *Instrumentation*

38. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily, U-238, Ra-226, Th-230, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner. Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

## POLICY STATEMENTS

discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

**26. Relations With Federal Government and Other States.** There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

**27. Coverage, Amendments, Reciprocity.** An agreement providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State, as contemplated by Public Law 86-373 and Public Law 95-604:

- 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. Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act; but must relate to the whole of such category or categories and not to a part of any category.<sup>4</sup> If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later agreement.

The agreement may incorporate by reference provisions of other documents, including these criteria, and the agreement shall be deemed to incorporate without specific reference the provisions of Pub. L. 86-373 and Pub. L. 95-604 and the related provisions of the Atomic Energy Act.

<sup>4</sup>A State which does not wish to continue regulation of uranium and thorium processors and byproduct material as defined in Section 11e(2) of the Atomic Energy Act as amended, after November 8, 1961 pursuant to Pub. L. 86-604 may obtain authority over all source material licensees within the State except for uranium or thorium processors.

Arrangements should be made for the reciprocal recognition of State licenses and Federal licenses in connection with out-of-the-jurisdiction operations by a State or Federal licensees.

**28. NRC and Department of Energy Contractors.** The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:

- a. Prime contractors performing work for the DOE at U.S. Government-owned or controlled sites;
- b. Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;
- c. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and
- d. Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and (ii) that the exemption of such contractor or subcontractor is authorized by law.

**Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1961**

### Statutes

**29.** State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 85-604, Uranium Mill Tailings Radiation Control Act (UMTRCA) as follows:

- a. Authority to regulate the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
- b. That an adequate surety (under terms established by regulation) will be provided by the licensee to assure the completion of all requirements established by the (cite appropriate State agency) for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with the generation or disposal of such byproduct material.
- c. If in the States' licensing and regulation of byproduct material or of any activity which produces byproduct material, the State collects funds from the licensee or its surety for long-term surveillance and maintenance of such material, the total amount of the funds collected by the State shall be transferred to the U.S. if custody of the byproduct material and its disposal site is transferred to the Federal Government upon termination of the State license. (See 10 CFR 150.32.) If no default has occurred and the

reclamation or other bonded activity has been performed, funds for the purpose are not to be transferred to the Federal Government. The funds collected by the State shall be sufficient to ensure compliance with the regulations the Commission establishes pursuant to Section 161X of the Atomic Energy Act.

- d. In the issuances of licenses, an opportunity for written comments, public hearing (with transcript) and cross examination is required.
- e. In the issuances of licenses, a written determination of the action to be taken based upon evidence presented during the public comment period and which is subject to judicial review is required.

f. A ban on major construction prior to completion of the written environmental analysis stipulated in Criterion 27.

g. An opportunity shall be provided for public participation through written comments, public hearings, and judicial review of rules.

**30.** In the enactment of any supporting legislation, the State should take into account the reservations of authority to the U.S. in UMTRCA as stated in 10 CFR 150.15a and summarized by the following:

- a. The establishment of minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of the byproduct material.
- b. The determination that prior to the termination of a license, the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which byproduct material is present.
- c. The requirement that prior to termination of any license for byproduct material, as defined in Section 11e(2), of the Atomic Energy Act or for any activity that results in the production of such material, title to such byproduct material and the disposal site be transferred to the Federal Government or State at the option of the State, provided such option is exercised prior to termination of the license.
- d. The authority to require such monitoring, maintenance, and emergency measures after the license is terminated as necessary to protect the public health and safety for those materials and property for which the State has assumed custody pursuant to Pub. L. 95-604.
- e. The authority to permit use of the surface or subsurface estate, or both of the land transferred to the United States or State pursuant under provision of the Uranium Mill Radiation Tailings Control Act.
- f. The authority to exempt land ownership transfer requirements of Section 83(b)(1)(A).

**31.** It is preferable that State statutes contain the provisions of Section 6 of the Model Act. But the following may be accomplished by adoption of either procedures by regulation or technical



## POLICY STATEMENTS

compliance with regulatory requirements.

Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

### Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials, the obtaining of injunctive relief, and the imposing of civil or criminal penalties.

### Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance

of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training-radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

### Special Nuclear Material, Source Material and Tritium

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(This definition is subject to change by future Commission rule or regulation.)

### Administration

23. *State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:*

- Formulation of rules of general applicability;
- Approving or denying applications for licenses or authorization to possess and use radioactive materials, and
- Taking disciplinary actions against licensees.

### Arrangements For Discontinuing NRC Jurisdiction

24. *State Agency Designation.* The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

25. *Existing NRC Licenses and Pending Applications.* In effecting the

## POLICY STATEMENTS

assessments should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the plant.

(2) It is expected that the State will review, evaluate and provide documentation of these evaluations. Items which should be evaluated are:

- (a) Proposed activities;
- (b) Scope of proposed action;
- (c) Specific activities to be conducted;
- (d) Administrative procedures;
- (e) Facility organization and radiological safety responsibilities, authorities, and personnel qualifications;

- (f) Licensee audits and inspections;
- (g) Radiation safety training programs for workers;

- (h) Radiation safety program, control and monitoring;

- (i) Restricted area markings and access control;

- (j) At existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills;

- (k) Environmental monitoring;

- (l) Emergency procedures, radiological;

- (m) Product transportation; and

- (n) Site and physical decommissioning procedures, other than tailings.

- (o) Employee exposure data and bioassay programs.

### b. Environmental Assessment

(1) The environmental evaluation should consist of a detailed and documented evaluation of the following items:

- (a) Topography;
- (b) Geology;
- (c) Hydrology and water quality;
- (d) Meteorology;
- (e) Background radiation;
- (f) Tailings retention system;
- (g) Interim stabilization, reclamation, and Site Decommissioning Program;

- (h) Radiological Dose Assessment;

- (1) Source terms
- (2) Exposure pathway
- (3) Dose commitment to individuals
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- (5) Evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisons with background values

- (6) Occupational dose
- (7) Radiological impact to biota other than man

- (8) Radiological monitoring programs, pre-occupational and operational

- (i) Impacts to surface and groundwater, both quality and quantity;

- (j) Environmental effects of accidents; and

- (k) Evaluation of tailings management alternatives in terms of regulations.

(2) The States are encouraged to examine the need to expand the scope of the assessment into other areas such as:

- (a) Ecology;

- (b) Environmental effects of site preparation and facility construction on environment and biota;

- (c) Environmental effects of use and discharge of chemicals and fuels; and

- (d) Economic and social effects.

### c. Inspections

(1) As a minimum, items which should be inspected or included during the inspection of a uranium mill should adhere to the items evaluated in the in-plant safety review. The principal items recommended for inspection are:

- (a) Administration;
- (b) Mill circuit, including any additions, deletions, or circuit changes;
- (c) Accidents/incidents;
- (d) Part 19 or equivalent requirements of the State;

- (e) Action taken on previous findings;

- (f) A mill tour to determine compliance with regulations, and license conditions;

- (g) Tailings waste management in accordance with regulations and license conditions (see NRC Reg. Guide 3.11.1);

- (h) Records;

- (i) Respiratory protection in accordance with license conditions or 10 CFR Part 20.

- (j) Effluent and environmental monitoring;

- (k) Training programs;

- (l) Transportation and shipping;

- (m) Internal review and audit by management;

- (n) Exit interview; and

- (o) Final written report documenting the results of the inspection and findings on each item.

- (2) In addition, the inspector should perform the following:

- (a) Independent surveys and sampling.

(3) Additional guidance is contained in appropriate NRC regulatory and inspection guides. A complete inspection should be performed at least once per year.

### d. Operational Data Review

(1) In addition to the reporting requirements required by the regulations or license conditions, the licensee will submit in writing to the regulatory agency within 60 days after January 1 and July 1 of each year, reports specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public.

(2) All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to conform the dose to receptors.

### Instrumentation

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. The State will submit its list of instrumentation to the NRC for review. Arrangements should be made for calibrating such equipment.

b. Laboratory-type instrumentation should be available in a State agency or through a commercial service which has the capability for quantitative and qualitative analysis of radionuclides associated with natural uranium and its decay chain, primarily U-238, Ra-226, Th-230, Pb-210, and Rn-222, in a variety of sample media such as will be encountered from an environmental sampling program.

Analysis and data reduction from laboratory analytical facilities should be available to the licensing and inspection authorities in a timely manner.

Normally, the data should be available within 30 days of submittal. State acceptability of quality assurance (QA) programs should also be established for the analytical laboratories.

c. Arrangements should also be completed so that a large number of samples in a variety of sample media resulting from a major accident can be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

d. Arrangements should be made to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

Committee on  
State Government

# SUGGESTED STATE LEGISLATION

1983 Volume 12



## Radiation Control Act

This draft act is a complete updating of the 1961 *Suggested State Legislation* act. It now covers both ionizing and nonionizing radiation. Procedural requirements for public participation in licensing of source material processing and related mill tailing management, environmental impact analysis and judicial review have been added in order to conform to the federal Uranium Mill Tailings Radiation Control Act of 1978. Authorization is provided for the negotiation of regional interstate compacts for low-level radioactive waste disposal, the acquisition of land for disposal sites and the establishing of a low-level waste disposal service. User fees are also authorized.

The legislation also requires that licensees provide financial surety to guarantee closure, decommissioning, reclamation and long-term care funds to cover custodial services after licenses terminate. Finally, the draft law gives the states authority to assess and collect civil monetary penalties for violations of licensing or registration requirements.

Many parts of the act are presented in brackets, indicating options for bill drafters. There are also several comments offered on specific parts of the law.

The draft legislation was submitted by the U.S. Nuclear Regulatory Commission.

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### Suggested Legislation

(Title, enacting clause, etc.)

1     Section 1. [*Short Title.*] This act may be cited as the Radiation Control  
2     Act.

3     Section 2. [*Declaration of Policy.*] It is the policy of the state in fur-  
4     therance of its responsibility to protect the [occupational and] public health  
5     and safety and the environment:

6         (1) To institute and maintain a regulatory program for sources of ioniz-  
7     ing and nonionizing radiation so as to provide for compatibility and  
8     equivalency with the standards and regulatory programs of the federal  
9     government, [a single,] [an integrated,] effective system of regulation within  
10    the state, and a system consonant insofar as possible with those of other  
11    states.

12         (2) To institute and maintain a program to permit development and use  
13     of sources of radiation for peaceful purposes consistent with the health and  
14     safety of the public.

15         (3) To provide for the availability of capacity either within or outside the  
16     state for the disposal of low-level radioactive waste generated within the state

15 except for waste generated as a result of defense or federal research and  
16 development activities and to recognize that such radioactive waste can be  
17 most safely and efficiently managed on a regional basis.

1 Section 3. [Purpose.] It is the purpose of this act to provide:

2 (1) A program of effective regulation of sources of radiation for the pro-  
3 tection of the [occupational and] public health and safety.

4 (2) A program to promote an orderly regulatory pattern within the state,  
5 among the states and between the federal government and the state and  
6 facilitate intergovernmental cooperation with respect to use and regulation of  
7 sources of radiation to the end that duplication of regulation may be  
8 minimized.

9 (3) A program to establish procedures for assumption and performance  
10 of certain regulatory responsibilities with respect to byproduct, source and  
11 special nuclear materials and radiation generating equipment.

12 (4) A program to permit use of sources of radiation consistent with the  
13 health and safety of the public.

1 Section 4. [Definitions.] As used in this act:

2 (1) "Byproduct material" means:

3 (i) Any radioactive material (except special nuclear material) yielded in  
4 or made radioactive by exposure to the radiation incident to the process of  
5 producing or utilizing special nuclear material, and

6 (ii) The tailings or wastes produced by the extraction or concentration  
7 of uranium or thorium from any ore processed primarily for its source  
8 material content.

9 (2) "Civil penalty" means any monetary penalty levied on a licensee or  
10 registrant because of violations of statutes, regulations, licenses or registra-  
11 tion certificates, but does not include criminal penalties.

12 (3) "Closure" or "Site closure" means all activities performed at a waste  
13 disposal site, such as stabilization and contouring, to assure that the site is in  
14 a stable condition so that only minor custodial care, surveillance and  
15 monitoring are necessary at the site following termination of licensed opera-  
16 tion.

17 (4) "Decommissioning" means final operational activities at a facility to  
18 dismantle site structures, to decontaminate site surfaces and remaining struc-  
19 tures, to stabilize and contain residual radioactive material and to carry out  
20 any other activities to prepare the site for postoperational care.

21 (5) "Disposal of low-level radioactive waste" means the isolation of such  
22 waste from the biosphere by emplacement in a land burial facility.

23 (6) "High-level radioactive waste" means:

24 (i) Irradiated reactor fuel.

25 (ii) Liquid wastes resulting from the operation of the first cycle solvent  
26 extraction system, or equivalent, and the concentrated wastes from sub-

27 sequent extraction cycles, or equivalent, in a facility for reprocessing ir-  
28 radiated reactor fuel.

29 (iii) Solids into which such liquid wastes have been converted.

30 (7) "General license" means a license effective under regulations pro-  
31 mulgated by the [agency] without the filing of an application with the [agency]  
32 or the issuance of licensing documents to particular persons to transfer, ac-  
33 quire, own, possess or use quantities of, or devices or equipment utilizing,  
34 radioactive material.

35 (8) "Specific license" means a license, issued to a named person upon  
36 application filed under the regulations promulgated under this act, to use,  
37 manufacture, produce, transfer, receive, acquire, or possess quantities of, or  
38 devices or equipment utilizing, radioactive material.

39 (9) "Low-level radioactive waste" means radioactive waste not classified  
40 as high-level radioactive waste, transuranic waste, spent nuclear fuel or  
41 byproduct material. *as def. in 4(1)(i)*

42 (10) "Person" means any individual, corporation, partnership, firm,  
43 association, trust, estate, public or private institution, group, agency of this  
44 state other than [agency], political subdivision of this state, any other state or  
45 political subdivision or agency thereof, and any legal successor, represen-  
46 tative, agent, or agency of the foregoing, but not including federal govern-  
47 ment agencies.

48 (11) "Radiation" means ionizing radiation and nonionizing radiation.

49 (12) "Ionizing radiation" means gamma rays and X-rays; alpha and beta  
50 particles, high-speed electrons, neutrons, protons, and other nuclear par-  
51 ticles; but not sound or radio waves, or visible, infrared or ultraviolet light.

52 (13) "Nonionizing radiation" means:

53 (i) Any electromagnetic radiation, other than ionizing elec-  
54 tromagnetic radiation.

55 (ii) Any sonic, ultrasonic or infrasonic wave.

56 (14) "Radiation generating equipment" means any manufactured  
57 product or device, or component part of such a product or device, or any  
58 machine or system which during operation can generate or emit radiation ex-  
59 cept those which emit radiation only from radioactive material.

60 (15) "Radioactive material" means material (solid, liquid or gas) which  
61 emits ionizing radiation spontaneously. It includes accelerator-produced,  
62 byproduct, naturally occurring, source and special nuclear materials.

63 (16) "Registration" means registration with the agency in accordance  
64 with rules and regulations adopted pursuant to this act.

65 (17) "Source material" means uranium or thorium, or any combination  
66 thereof, in any physical or chemical form; or ores which contain by weight  
67 one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or  
68 any combination thereof. Source material does not include special nuclear  
69 material.

70 (18) "Source material mill tailings" means the tailings or wastes pro-

71 duced by the extraction or concentration of uranium or thorium from any  
72 ore processed primarily for its source material content, including discrete sur-  
73 face wastes resulting from underground solution extraction processes but not  
74 including underground ore bodies depleted by such solution extraction pro-  
75 cesses.

76 (19) "Source material milling" means any processing of ore, [including]  
77 [excluding] underground solution extraction of unmined ore], primarily for  
78 the purpose of extracting or concentrating uranium or thorium therefrom  
79 and which results in the production of source material mill tailings.

Comment: The SSL Committee placed part of this subsection in brackets, making the inclusion or ex-  
clusion of underground mining optional. The U.S. Nuclear Regulatory Commission advises, that in its  
opinion, exclusion would raise questions of compatibility with the intent of federal laws and regulation.

80 (20) "Sources of radiation" means, collectively, radioactive material and  
81 radiation generating equipment.

82 (21) "Special nuclear material" means plutonium, uranium 233, and  
83 uranium enriched in the isotope 233 or in the isotope 235, but does not in-  
84 clude source material; or any material artificially enriched by any of the  
85 foregoing, but does not include source material.

86 (22) "Spent nuclear fuel" means irradiated nuclear fuel that has  
87 undergone at least one year's decay since being used as a source of energy in a  
88 power reactor. Spent fuel includes the special nuclear material, byproduct  
89 material, source material and other radioactive material associated with fuel  
90 assemblies.

91 (23) "Transuranic waste" means radioactive waste containing alpha  
92 emitting transuranic elements, with radioactive half-lives greater than five  
93 years, in excess of  $10^6$  nanocuries per gram.

# 1 Section 5. [State Radiation Control Agency.]

2 (a) [The department of \_\_\_\_\_ is hereby designated as the State Radiation  
3 Control Agency, hereinafter referred to as the agency.] [There is hereby  
4 created a State Radiation Control Agency, hereinafter referred to as the  
5 agency. The agency shall be an organizational component of the state depart-  
6 ment of \_\_\_\_\_.] [There is hereby created an independent State Radiation Con-  
7 trol Agency, hereinafter referred to as the agency.]

8 (b) [The head of the state department of \_\_\_\_\_] shall designate the director  
9 of the agency, hereinafter referred to as the director, who shall perform the  
10 functions vested in the agency under the provisions of this act. [If an in-  
11 dependent State Radiation Control Agency is created, the governor should  
12 appoint the director.]

13 (c) In accordance with the laws of the state, the agency may employ, com-  
14 pensate and prescribe the powers and duties of such individuals as may be  
15 necessary to carry out the provisions of this act.

16 (d) The agency shall for the protection of the [occupational and] public  
17 health and safety [and the environment]:

18 (1) Develop programs for evaluation and control of hazards associated

19 with use of sources of radiation.

20 (2) Develop programs with due regard for compatibility with federal pro-  
21 grams for regulation of byproduct, source and special nuclear materials.

22 (3) Develop programs with due regard for consistency with federal pro-  
23 grams for regulation of radiation generating equipment.

24 (4) Formulate, adopt, promulgate and repeal codes, rules and regula-  
25 tions, which may provide for licensing and/or registration, relating to control  
26 of sources of radiation with due regard for compatibility with the regulatory  
27 programs of the federal government.

28 (5) Issue such orders or modifications thereof as may be necessary in  
29 connection with proceedings under this act.

30 This power is intended for use in conjunction with any licensing authority.  
31 [The act or acts providing this authority should be cited.]

32 (6) Advise, consult, and cooperate with other agencies of the state, the  
33 federal government, other states and interstate agencies, political subdivi-  
34 sions, and other organizations concerned with control of sources of radia-  
35 tion.

36 (7) Have the authority to accept and administer loans, grants or other  
37 funds or gifts, conditional or otherwise, in furtherance of its functions, from  
38 the federal government and from other sources, public or private.

39 (8) Encourage, participate in, or conduct studies, investigations, train-  
40 ing, research and demonstrations relating to control of sources of radiation.

41 (9) Collect and disseminate information relating to control of sources of  
42 radiation, including:

43 (i) Maintenance of a file of all license application, issuances, denials,  
44 amendments, transfers, renewals, modifications, suspensions and revoca-  
45 tions.

46 (ii) Maintenance of a file of registrants possessing sources of radiation  
47 requiring registration under the provisions of this act and any administrative  
48 or judicial action pertaining thereto.

49 (iii) Maintenance of a file of all of the agency's rules and regulations  
50 relating to regulation of sources of radiation, pending or promulgated, and  
51 proceedings thereon.

Comment: Subsections (c) and (f) which follow are recommended for those states in which regulatory  
responsibilities for radiation are assigned to two or more agencies. The state may want to assign this  
coordinating function to a committee representing the several agencies instead of to a single coor-  
dinator.

52 (e) The governor shall designate a Coordinator of Radiation Activities.  
53 The coordinator shall:

54 (1) Consult with and review regulations and procedures of the agencies  
55 to assure consistency and to prevent unnecessary duplication, inconsistencies  
56 or gaps in regulatory requirements.

57 (2) Review [before and] after the holding of any public hearing required  
58 under the provisions of this act prior to promulgation, the proposed rules



59 and regulations of all agencies of the state relating to use and control of radiation, to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state. Proposed rules and regulations shall not be effective until [ ] days after submission to the coordinator, unless either the governor or the coordinator waives all or part of such [ ] day period. The waiting period should run concurrently with any waiting period required by any other state law.

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66 (3) When the coordinator determines that proposed rules or regulations are inconsistent with rules and regulations of other agencies of the state, consult with the agencies involved in an effort to resolve such inconsistencies. Upon notification by the coordinator that such inconsistency has not been resolved, the governor may find that the proposed rules and regulations or parts thereof are inconsistent with rules or regulations of other agencies of the state and may issue an order to that effect in which event the proposed rules or regulations or parts thereof shall not become effective. The governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules or regulations to achieve consistency with the proposed rules or regulations.

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77 (f) The several agencies of the state [and political subdivisions] shall keep the coordinator fully and currently informed as to their activities relating to [development and] regulation of sources of radiation.

#### 1 Section 6. [Advisory Committee on Radiation.]

2 (a) The [insert appropriate official] is authorized to appoint an Advisory  
3 Committee on Radiation consisting of [ ] members with training and ex-  
4 perience in the various fields in which sources of radiation are used. Members  
5 of the committee shall serve at the discretion of the [insert appropriate of-  
6 ficial] and [receive no salary for services but may be reimbursed for actual ex-  
7 penses incurred in connection with attendance at committee meetings or for  
8 authorized business of the committee.] [ ], when on business of the committee,  
9 be entitled to receive compensation at the rate of [ ] dollars per diem [in  
10 accordance with [ ] and may be reimbursed for actual expenses incurred].

11 (b) The committee, if appointed, shall make recommendations to the [cite  
12 appropriate official] and furnish such advice as may be requested by the  
13 agency on matters relating to the regulation of sources of radiation.

Comment: Two alternatives for licensing are presented, the first a shorter version.

#### [ALTERNATE I (Short Form)]

#### 1 Section 7. [Licensing and Registration of Sources of Radiation.]

2 (a) The agency shall provide by rule or regulation for [general or specific]  
3 licensing of [byproduct, source and special nuclear materials] [radioactive  
4 material] [radioactive material not under the authority of the U.S. Nuclear

5 Regulatory Commission,] or devices or equipment utilizing such material[s].  
6 Such rule or regulation shall provide for amendment, suspension or revoca-  
7 tion of licenses.

8 (b) The agency is authorized to require registration [or licensing] of other  
9 sources of radiation.

10 (c) The agency is authorized to exempt certain sources of radiation or kinds  
11 of uses or users from the licensing or registration requirements set forth in  
12 this section when the agency makes a finding that the exemption of such  
13 sources of radiation or kinds of uses or users will not constitute a significant  
14 risk to the health and safety of the public.

15 (d) Rules and regulations promulgated under this act may provide for  
16 recognition of other state or federal licenses as the agency may deem  
17 desirable, subject to such registration requirements as the agency may  
18 prescribe.

#### [ALTERNATE II (Long Form)]

#### 1 Section 7. [Licensing and Registration of Sources of Radiation.]

2 (a) The agency shall provide by rule or regulation for [general or specific]  
3 licensing of [byproduct, source and special nuclear materials] [radioactive  
4 material] [radioactive material not under the authority of the U.S. Nuclear  
5 Regulatory Commission] or devices or equipment utilizing such material.  
6 Such rule or regulation shall provide for amendment, suspension or revoca-  
7 tion of licenses. Such rule or regulation shall provide that:

8 (1) Each application for a [specific] license shall be in writing and shall  
9 state such information as the agency by rule or regulation, may determine to  
10 be necessary to decide the technical and financial qualification or any other  
11 qualifications of the applicant as the agency may deem reasonable and  
12 necessary to protect the [occupational and] public health and safety. The  
13 agency may at any time after the filing of the application, and before the ex-  
14 piration of the license, require further written statements and may make such  
15 inspections as the agency may deem necessary in order to determine whether  
16 the license should be modified, suspended or revoked. All applications and  
17 statements shall be signed by the applicant or licensee. The agency may re-  
18 quire any applications or statements to be made under oath or affirmation.

19 (2) Each license shall be in such form and contain such terms and condi-  
20 tions as the agency may by rule or regulation prescribe.

21 (3) No license issued under the authority of this act and no right to  
22 possess or use sources of radiation granted by any license shall be assigned or  
23 in any manner disposed of unless the agency shall, after securing full informa-  
24 tion, find that the transfer is in accordance with the provisions of this act,  
25 and shall give its consent in writing.

26 (4) The terms and conditions of all licenses shall be subject to amend-  
27 ment, revision, or modification by rules, regulations or orders issued in ac-

28 cordance with the provisions of this act.

29 (b) The agency is authorized to require registration or licensing of other  
30 sources of radiation.

31 (c) The agency is authorized to exempt certain sources of radiation or kinds  
32 of uses or users from the licensing or registration requirements set forth in  
33 this section when the agency makes a finding that the exemption of such  
34 sources of radiation or kinds of uses or users will not constitute a significant  
35 risk to the health and safety of the public.

36 (d) Rules and regulations promulgated under this act may provide for  
37 recognition of other state or federal licenses as the agency shall deem  
38 desirable, subject to such registration requirements as the agency may  
39 prescribe.

1 Section 8. [Source Material Processing and Related [Byproduct Material]  
2 [Mill Tailings].]

3 (a) Custody of disposal sites:

4 (1) Any radioactive materials license issued or renewed after the effective  
5 date of this section for any activity which results in the production of  
6 [byproduct material] [source material mill tailings] shall contain such terms  
7 and conditions as the agency determines to be necessary to assure that, prior  
8 to termination of such license:

9 (i) The licensee will comply with decontamination, decommissioning,  
10 and reclamation standards prescribed by the agency, which shall be  
11 equivalent, to the extent practicable, or more stringent than those of the U.S.  
12 Nuclear Regulatory Commission for sites at which ores were processed  
13 primarily for their source material content, and at which such [byproduct  
14 material is] [mill tailings are] deposited.

15 (ii) Ownership of any disposal site and such [byproduct material] [mill  
16 tailings] which resulted from the licensed activity shall, subject to the provi-  
17 sions of this act, be transferred to the United States or the state if the state ex-  
18 ercises the option to acquire land used for the disposal of such [byproduct  
19 material] [mill tailings].

20 Any license which is in effect on the effective date of this section and which  
21 is subsequently terminated without renewal shall comply with subsections (i)  
22 and (ii) upon termination.

23 (2) The agency shall:

24 (i) Require by rule, regulation, or order that prior to the termination  
25 of any license which is issued after the effective date of this section, title to  
26 the land, including any interests therein (other than land held in trust by the  
27 United States for any Indian tribe or owned by an Indian tribe subject to a  
28 restriction against alienation imposed by the United States or land already  
29 owned by the United States or by the state) which is used under such license  
30 for the disposal of [byproduct material] [source material mill tailings] shall be  
31 transferred to the United States, or the state unless the U.S. Nuclear

32 Regulatory Commission determines prior to such termination that transfer of  
33 title to such land and such [material] [mill tailings] is not necessary or  
34 desirable to protect the public health, safety or welfare or to minimize danger  
35 to life or property.

36 (ii) If transfer to the state of title to such [byproduct material] [mill  
37 tailing] and land is required, following the U.S. Nuclear Regulatory Commis-  
38 sion's determination that the licensee has complied with applicable standards  
39 and requirements under his license, assume title to such [material] [mill tail-  
40 ings] and land and maintain such [material] [mill tailings] and land in such  
41 manner as will protect the public health and safety and the environment.

42 (iii) The agency is authorized to undertake such monitoring,  
43 maintenance and emergency measures as are necessary to protect the public  
44 health and safety for those materials and property for which it has assumed  
45 custody pursuant to this act.

46 (iv) The transfer of title to land or [byproduct materials] [source  
47 material mill tailings] to the United States or the state shall not relieve any  
48 licensee of liability for any fraudulent or negligent acts done prior to such  
49 transfer.

50 (v) [Material] [Mill tailings] and land transferred to the United States  
51 or the state in accordance with this subsection shall be transferred without  
52 cost to the United States or the state other than administrative and legal costs  
53 incurred by the United States or the state in carrying out such transfer.

54 (b) In licensing and regulation of [byproduct material] [source material mill  
55 tailings] or of any activity which results in the production of [byproduct  
56 material] [such tailings], the agency shall require compliance with applicable  
57 standards promulgated by the agency which are equivalent, to the extent  
58 practicable, or more stringent than, standards adopted and enforced by the  
59 U.S. Nuclear Regulatory Commission for the same purpose, including re-  
60 quirements and standards promulgated by the U.S. Environmental Protec-  
61 tion Agency.

1 Section 9. [Low-level Radioactive Waste Disposal]

2 (a) The agency is authorized to enter into negotiations for a compact with  
3 other states for the establishment and operation of a regional facility for  
4 disposal of low-level radioactive waste. Any such compact, before being put  
5 into effect, shall be ratified by the legislatures of the several states and con-  
6 sented to by the Congress of the United States.

Comment: To avoid the appearance of conflict of interests between regulatory and operational responsibilities, the agency designated in subsections (a), (b), (c) and (d) for custody and operational management of facilities for the disposal of radioactive waste should not be the same agency as designated in Section 5 as the radiation control agency. The licensing agency designated in sub section (d) (third reference) and in subsection (e) is the radiation control agency and the regulatory agency having jurisdiction in subsection (c) is either the radiation control agency or the U.S. Nuclear Regulatory Commission.

(b) The state is authorized to accept or acquire, by gift, transfer or purchase, from another government agency or private person, suitable sites including land and appurtenances for the disposal of low-level radioactive waste. Sites received by gift or transfer are subject to approval and acceptance by the [agency on behalf of the] state.

(c) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired in fee simple absolute and used exclusively for such purpose, unless or until the regulatory agency having licensing jurisdiction over the site determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such site is leased for other use, the regulatory agency shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. All radioactive material accepted by the agency or by any agent of the agency for disposal on a radioactive waste disposal site shall become the property of the state.

(d) The agency is authorized to arrange for the availability of a service for disposal of low-level radioactive waste by contract [or agency] operation of a disposal site acquired under subsection (b) or already owned by the state. A contract operator shall be subject to the surety and long-term care funding provisions of this act and to appropriate licensing by the U.S. Nuclear Regulatory Commission or by the agency under an agreement under this act.

(e) The agency shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or federal government.

#### Section 10. [Radiation User Fees.]

(a) The agency shall prescribe and collect such fees as may be established by regulation for radiation protection services provided under this act. Services for which fees may be established include:

(1) Registration of radiation generating equipment, and other sources of radiation.

(2) Issuance, amendment and renewal of licenses for radioactive materials.

(3) Inspections of registrants or licensees.

(4) Environmental surveillance activities to assess the radiological impact of activities conducted by licensees.

(b) In determining rates of such fees, the agency shall, as an objective, obtain sufficient funds therefrom to reimburse the state for all or a substantial portion of the direct and indirect costs of the radiation protection services specified in subsection (a). The agency shall take into account any special arrangements between the state and a registrant, licensee, another state or a federal agency whereby the cost of the service is otherwise partially or fully recovered.

(c) Notwithstanding the provisions of subsection (a), fees for registration of radiation generating equipment and other sources of radiation and for licenses for radioactive materials shall not be required for an agency of the state or any political subdivision thereof.

(d) The agency may, upon application by an interested person, or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(e) When a registrant or licensee fails to pay the applicable fee, the agency may suspend or revoke the registration or license or may issue an appropriate order.

#### Section 11. [Surety Requirements.]

(a) For licensed activities involving source material milling, source material mill tailing and disposal of low-level radioactive waste the agency shall, and for other classes of licensed activity the agency may, establish by rule or regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the agency for the decontamination, closure, decommissioning and reclamation of sites, structures and equipment used in conjunction with such licensed activity, in case the licensee should default for any reason in performing such requirements.

*Comment:* Acceptable sureties would include bonds issued by fidelity or surety companies authorized to do business in the state, cash deposits, certificates of deposit, deposits of government securities, irrevocable letters of credit, trust funds, escrow accounts or such other types of arrangements, but not including any arrangement which essentially constitutes self insurance.

Subsection (a) can be amended, if desired, to require the surety to also ensure payment of the long-term care funds required by subsection (c).

(b) All sureties required under subsection (a) which are forfeited shall be paid to the agency for deposit by the [state treasurer] in a special fund called the [radiation site closure and reclamation fund]. All monies in this fund are hereby appropriated and may be expended by the agency as necessary to complete such requirements on which licensees have defaulted. Monies in this fund shall not be used for normal operating expenses of the agency.

*Comment:* The state may want to consider ways of maximizing this fund by authorizing the investment of unexpended monies of the fund in a manner consistent with state policy and statutes.

(c) For licensed activities involving the disposal of source material mill tailings and disposal of low-level radioactive waste the agency shall, and for other classes of licensed activity when radioactive material which will require



20 surveillance or care is likely to remain at the site after the licensed activities  
21 cease the agency may, establish by rule or regulation standards and pro-  
22 cedures to ensure that the licensee, before termination of the license, will  
23 make available such funding arrangements as may be necessary to provide for  
24 long-term site surveillance and care.

25 (d) All funds collected from licensees under subsection (c) shall be paid to  
26 the agency for deposit by the [state treasurer] in a special fund called the  
27 [radiation long-term care fund]. All funds accrued as interest on monies  
28 deposited in this fund are hereby appropriated and may be expended by the  
29 agency for the continuing long-term surveillance, maintenance and other care  
30 of facilities from which such funds are collected as necessary for protection of  
31 the public health, safety and environment. Notwithstanding any other provi-  
32 sions of this subsection, if title to and custody of any radioactive material and  
33 its disposal site are transferred to the United States upon termination of any  
34 license for which funds have been collected for such long-term care, the col-  
35 lected funds and interest accrued thereon shall be transferred to the United  
36 States.

Comment: The state may want to authorize appropriations and expenditures from this fund to carry out the purposes of subsections (c) and (d) and may want to maximize this fund by authorizing the investment and unexpended appropriated interest in a manner consistent with state policy and statutes.

37 (e) The sureties or other financial arrangements and funds required by  
38 subsections (a) and (c) shall be established in amounts sufficient to ensure  
39 compliance with those standards, if any, established by the U.S. Nuclear  
40 Regulatory Commission pertaining to closure, decommissioning, reclamation  
41 and long-term site surveillance and care of such facilities and sites.

42 (f) In order to provide for the proper care and surveillance of sites subject  
43 to subsection (c) and which are not subject to Section 8 or 9, the [state]  
44 [agency on behalf of the state] may acquire by gift or transfer from another  
45 government agency or private person, any land and appurtenances necessary  
46 to fulfill the purposes of this section. Any such gift or transfer is subject to  
47 approval and acceptance by the [state] [agency].

48 (g) The agency may by contract, agreement, lease or license with any per-  
49 son, including another state agency, provide for the decontamination,  
50 closure, decommissioning, reclamation, surveillance or other care of a site  
51 subject to this section as needed to carry out the purposes of this section.

52 (h) In the event a person licensed by any governmental agency other than  
53 [state] [agency] desires to transfer a site to the state for the purpose of ad-  
54 ministrating or providing long-term care, a lump sum deposit shall be made to  
55 the [radiation long-term care fund]. The amount of such deposit shall be  
56 determined by the agency taking into account the factors stated in subsec-  
57 tions (c) and (e) of this section.

58 (i) [All state, local, or other government agencies, shall be exempt from the  
59 requirements of subsections (a) and (c)].

1 Section 12. [Inspection.] The agency or its duly authorized representatives  
2 shall have the power to enter at all reasonable times upon any private or  
3 public property for the purpose of determining whether or not there is com-  
4 pliance with or violation of the provisions of this act and rules and regula-  
5 tions issued thereunder, except that entry into areas under the jurisdiction of  
6 the federal government shall be effected only with the concurrence of the  
7 federal government or its duly designated representative.

1 Section 13. [Records.] The agency is authorized to require by rule, regula-  
2 tion or order, the keeping of such records with respect to activities under  
3 licenses and registration certificates issued under this act as may be necessary  
4 to effectuate the purposes of this act. These records shall be made available  
5 for inspection by, or copies thereof shall be submitted to, the agency on re-  
6 quest.

#### 1 Section 14. [Federal-State Agreements.]

2 (a) The governor, on behalf of this state, is authorized to enter into  
3 agreements with the U.S. Nuclear Regulatory Commission under Section  
4 274b of the Atomic Energy Act of 1954, as amended, providing for discon-  
5 tinuance of certain of the Commission's licensing and related regulatory  
6 authority with respect to byproduct, source and special nuclear materials and  
7 the assumption of regulatory authority therefore by this state.

8 (b) Any person who, on the effective date of an agreement under subsec-  
9 tion (a) above, possesses a license issued by the U.S. Nuclear Regulatory  
10 Commission for radioactive materials subject to the agreement shall be  
11 deemed to possess a like license issued under this act, which shall expire either  
12 90 days after receipt from the agency of a notice of expiration of such license,  
13 or on the date of expiration specified in the Nuclear Regulatory Commission  
14 license, whichever is earlier.

#### 1 Section 15. [Inspection Agreements and Training Programs.]

2 (a) The agency is authorized to enter into [, subject to the approval of the  
3 governor,] an agreement or agreements with the U.S. Nuclear Regulatory  
4 Commission under Section 274i of the Atomic Energy Act of 1954, as amend-  
5 ed, other federal government agencies as authorized by law, other states or  
6 interstate agencies, whereby this state will perform on a cooperative basis  
7 with the commission, other federal government agencies, other states or in-  
8 terstate agencies, inspections or other functions relating to control of sources  
9 of radiation.

10 (b) The agency may institute training programs for the purpose of qualify-  
11 ing personnel to carry out the provisions of this act, and may make said per-  
12 sonnel available for participation in any program or programs of the federal  
13 government, other states or interstate agencies in furtherance of the purposes  
14 of this act.

1 Section 16. *[Conflicting Laws.]* Ordinances, resolutions or regulations,  
2 now or hereafter in effect, of the governing body of a municipality or county  
3 or of state agencies other than the agency[ies] named in Section 5 relating to  
4 byproduct, source and special nuclear materials shall not be superseded by  
5 this act; provided, that such ordinances or regulations are and continue to be  
6 consistent with the provisions of this act, amendments thereto and rules and  
7 regulations thereunder.

1 Section 17. *[Administrative Procedure and Judicial Review.]*

2 (a) In any proceeding for the issuance or modification of rules or regula-  
3 tions relating to control of sources of radiation, the agency shall provide an  
4 opportunity for public participation through written comments or a public  
5 hearing.

6 (b) In any proceeding for the denial of an application for license or for  
7 revocation, suspension or modification of a license, the agency shall provide  
8 to the applicant or licensee an opportunity for a hearing on the record.

9 (c) In any proceeding for licensing ores processed primarily for their source  
10 material content and disposal of [byproduct material] [source material mill  
11 tailings] or for licensing disposal of low-level radioactive waste, the agency  
12 shall provide:

13 (1) An opportunity, after public notice, for written comments and a  
14 public hearing, with a transcript.

15 (2) An opportunity for cross examination.

16 (3) A written determination of the action to be taken which is based  
17 upon findings included in the determination and upon evidence presented  
18 during the public comment period.

19 (d) In any proceeding for licensing ores processed primarily for their source  
20 material content and disposal of [byproduct material] [source material mill  
21 tailings] or for licensing disposal of low-level radioactive waste, the agency  
22 shall prepare, for each licensed activity which has a significant impact on the  
23 human environment, a written analysis of the impact of such licensed activity  
24 on the environment. The analysis shall be available to the public before the  
25 commencement of hearings held pursuant to subsection (c) and shall include:

26 (1) An assessment of the radiological and nonradiological impacts to the  
27 public health.

28 (2) An assessment of any impact on any waterway and groundwater.

29 (3) Consideration of alternatives, including alternative sites and  
30 engineering methods, to the activities to be conducted.

31 (4) Consideration of the long-term impacts, including decommissioning,  
32 decontamination and reclamation of facilities and sites associated with the  
33 licensed activities and management of any radioactive materials which will re-  
34 main on the site after such decommissioning, decontamination and reclama-  
35 tion.

36 (e) The agency shall prohibit any major construction with respect to any  
37 activity for which an environmental impact analysis is required by subsection  
38 (d) prior to completion of such analysis.

39 (f) Whenever the agency finds that an emergency exists requiring im-  
40 mediate action to protect the public health and safety, the agency may,  
41 without notice or hearing, issue a regulation or order reciting the existence of  
42 such emergency and requiring that such action be taken as is necessary to  
43 meet the emergency. Notwithstanding any provision of this act, such regula-  
44 tion or order shall be effective immediately. Any person to whom such  
45 regulation or order is directed shall comply therewith immediately, but on ap-  
46 plication to the agency shall be afforded a hearing within [ ] days. On the  
47 basis of such hearing, the emergency regulation or order shall be continued,  
48 modified or revoked within [30] days after such hearing.

49 (g) Any final agency action or order entered in any proceeding under  
50 subsections (a), (b), (c) and (f) above shall be subject to judicial review by the  
51 [appropriate court] in the manner prescribed in [cite appropriate state act set-  
52 ting out procedure for appeal.]

1 Section 18. *[Injunction Proceedings.]* Whenever, in the judgment of the  
2 agency, any person has engaged in or is about to engage in any acts or prac-  
3 tices which constitute or will constitute a violation of any provision of this  
4 act, or any rule, regulation or order issued thereunder, [and at the request of  
5 the agency,] the [attorney general] may make application to the [appropriate  
6 court] for an order enjoining such acts or practices, or for an order directing  
7 compliance, and upon a showing by the agency that such person has engaged  
8 or is about to engage in any such acts or practices, a permanent or temporary  
9 injunction, restraining order, or other order may be granted.

1 Section 19. *[Prohibited Uses.]* It shall be unlawful for any person to use,  
2 manufacture, produce, distribute, sell, transport, transfer, install, repair,  
3 receive, acquire, own or possess any source of radiation unless licensed by or  
4 registered with the agency in conformance with rules and regulations, if any,  
5 promulgated in accordance with the provisions of this act.

1 Section 20. *[Impounding.]* The agency shall have the authority in the event  
2 of an emergency to impound or order the impounding of sources of radiation  
3 in the possession of any person who is not equipped to observe or fails to  
4 observe the provisions of this act or any rules or regulations issued  
5 thereunder.

1 Section 21. *[Penalties.]*

2 (a) Criminal penalties. Any person who [willfully] violates any of the provi-  
3 sions of this act or rules, regulations or orders of the agency in effect pur-

4 suant thereto shall upon conviction thereof, be punished by [fine, imprison-  
5 ment, or both].

6 (b) Civil penalties:

7 (1) Any person who violates any licensing or registration provision of  
8 this act or any rule, regulation, or order issued thereunder, or any term, con-  
9 dition or limitation of any license or registration certificate issued thereunder,  
10 or commits any violation for which a license or registration certificate may be  
11 revoked under rules or regulations issued under this act may be subject to a  
12 civil penalty, to be imposed by the agency, not to exceed [insert appropriate  
13 dollar amount]. If any violation is a continuing one, each day of such viola-  
14 tion shall constitute a separate violation for the purpose of computing the ap-  
15 plicable civil penalty. The agency shall have the power to compromise,  
16 mitigate, or remit such penalties.

17 (2) Whenever the agency proposes to subject a person to the imposition  
18 of a civil penalty under the provisions of this subsection (b), it shall notify  
19 such person in writing:

20 (i) Setting forth the date, facts, and nature of each act or omission  
21 with which the person is charged.

22 (ii) Specifically identifying the particular provision or provisions of the  
23 section, rule, regulation, order, license or registration certificate involved in  
24 the violation.

25 (iii) Advising of each penalty which the agency proposes to impose  
26 and its amount.

27 Such written notice shall be sent by registered or certified mail by the  
28 agency to the last known address of such person. The person so notified shall  
29 be granted an opportunity to show in writing, within such reasonable period  
30 as the agency shall by rule or regulation prescribe, why such penalty should  
31 not be imposed. The notice shall also advise such person that upon failure to  
32 pay the civil penalty subsequently determined by the agency, if any, the  
33 penalty may be collected by civil action. Any person upon whom a civil  
34 penalty is imposed may appeal such action under [state administrative pro-  
35 cedure act].

36 (3) On the request of the agency, the [name appropriate state agency, e.g., at-  
37 torney general] is authorized to institute a civil action to collect a penalty imposed  
38 pursuant to this subsection (b). The [name appropriate state agency, e.g., attorney  
39 general] shall have the exclusive power to compromise, mitigate, or remit such civil  
40 penalties as are referred to him for collection.

41 (4) All monies collected from civil penalties shall be paid to the [state  
42 treasurer] for deposit in the general fund. Monies collected from civil penalties  
43 shall not be used for normal operating expenses of the [agency] except as ap-  
44 propriations are made from the general fund in the normal budgetary process.

1 Section 23. [Severability.] [Insert severability clause.]

1 Section 24. [Repeal.] [Insert repealer clause.]

1 Section 25. [Effective Date.] [Insert effective date.]

1 Section 22. [Authorization of Appropriations.] [Insert appropriation section.]

**NUREG-0980**  
**Vol. 1, No. 2**

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# **Nuclear Regulatory Legislation**

**102d Congress**

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**U.S. Nuclear Regulatory Commission**

**Office of the General Counsel**





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or services to be provided

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Agency  
jurisdiction.  
42 USC sec. 2018.

Applicability  
of Federal  
Power Act.  
42 USC sec. 2019.

Licensing of  
Government  
agencies.  
42 USC sec. 2020.

Cooperation  
with States.  
42 USC sec. 2021.

Agreements

"Sec. 271. Agency Jurisdiction.—Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or Local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: *Provided*, That this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission.<sup>207</sup>

"Sec. 272. Applicability Of Federal Power Act.—Every licensee under this Act who holds a license from the Commission for a utilization of production facility for the generation of commercial electric energy under section 103 and who transmits such electric energy in interstate commerce or sells it as wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act.

"Sec. 273. Licensing Of Government Agencies.—Nothing in this Act shall preclude any Government agency now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy from obtaining a license under section 103, if qualified under the provisions of section 103, for the construction and operation of production of utilization facilities for the primary purpose of producing electric energy for disposition for ultimate public consumption.

"Sec. 274. Cooperation With States.<sup>208</sup>—

"a. It is the purpose of this section—

"(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

"(2) to recognize the need, and establish programs for cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

"(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

"(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

"b. Except as provided in subsection c., the Commission is

<sup>207</sup>Public Law 89-135 (79 Stat. 551) (1965), amended sec. 271. Prior to amendment this section read as follows:

"Sec. 271. AGENCY JURISDICTION—Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power."

<sup>208</sup>Public Law 86-373 (73 Stat. 682) (1959), sec. 1, added sec. 274.

with States.

authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

"(1) byproduct materials as defined in section 11e. (1);<sup>209</sup>

"(2) byproduct materials as defined in section 11e. (2);<sup>210</sup>

"(3) source materials;

"(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

"c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

"(1) the construction and operation of any production or utilization facility or any uranium enrichment facility;<sup>210a</sup>

"(2) 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 disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

"(4) the disposal of such other byproduct, source, or special nuclear material as the Commission 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. The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11e. (2).<sup>211</sup>

42 USC 2014.

Conditions.

Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to 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 issued by the Commission.

"d. The Commission shall enter into an agreement under subsection h. of this section with any State if—

<sup>209</sup>Public Law 95-604 (92 Stat. 3036) (1978), sec. 204(a), amended sec. 274(b)(1) by adding "as defined in section 11e. (1)" after the words "byproduct materials".

<sup>210</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(a), renumbered paragraphs (2) and (3) as paragraphs (3) and (4), and added a new paragraph (2).

<sup>210a</sup>Public Law 102-486 (106 Stat. 2944), Oct. 24, 1992.

<sup>211</sup>Public Law 95-604 (92 Stat. 3038) (1978), sec. 204(f), added a new sentence after paragraph (4).

Publication  
in F.R.

Licensing  
requirements.  
Exemptions.

Federal  
Radiation  
Council.

<sup>212</sup>Public  
Law 95-604 (92 Stat. 3038) (1978), sec. 204(f), added a new sentence after paragraph (4).



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section 11e. (1);<sup>209</sup>  
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Licensing  
requirements.  
Exemptions.

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Radiation  
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"(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects<sup>212</sup> compatible with the Commission's program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

"e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

"(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

"f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

"g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

"h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time,

<sup>212</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 904(b), amended sec. 274(d)(2) by inserting the words "in accordance with the requirements of subsection o. and in all other respects" before the word "compatible".

Inspections.

Termination  
of agreement.

from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

"i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any such State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

"j. (1)<sup>213</sup> The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of <sup>214</sup> its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1)<sup>215</sup> such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of this section.<sup>216</sup>

"(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

"(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State, and

"(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall

<sup>213</sup>Public Law 96-295 (94 Stat. 787) (1980), sec. 205, inserted "(1)" after "j".

<sup>214</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(1), amended sec. 274j by adding the words "all or part of" after "suspend".

<sup>215</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(2), amended sec. 274j by inserting "(1)" after "finds that".

<sup>216</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(d)(3), amended sec. 274j by adding at the end before the period ", or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section".

Notice of  
filing.

Definition.

"Agreement."

*Ante*, p. 3033.  
*Post*, p. 3039.

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Notice of  
filing.

Definition.

"Agreement."

Ante, p. 3033.

Post, p. 3039.

authorize the Commission to exercise its authority only to the  
extent necessary to contain or eliminate the danger."<sup>217</sup>

"k. Nothing in this section shall be construed to affect the author-  
ity of any State or local agency to regulate activities for purposes  
other than protection against radiation hazards.

"l. With respect to each application for Commission license  
authorizing an activity as to which the Commission's authority is  
continued pursuant to subsection c., the Commission shall give  
prompt notice to the State or States in which the activity will be  
conducted of the filing of the license application; and shall afford  
reasonable opportunity for State representatives to offer evidence,  
interrogate witnesses, and advise the Commission as to the applica-  
tion without requiring such representatives to take a position for or  
against the granting of the application.

"m. No agreement entered into under subsection b., and no ex-  
emption granted pursuant to subsection f., shall affect the author-  
ity of the Commission under subsection 161 b. or i. it 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. For purposes of subsection 161 i., activi-  
ties covered by exemptions granted pursuant to subsection f. shall  
be deemed to constitute activities authorized pursuant to this Act;  
and special nuclear material acquired by any person pursuant to  
such an exemption shall be deemed to have been acquired pursu-  
ant to section 53.

"n. As used in this section, the term 'State' means any State,  
Territory, or possession of the United States, the Canal Zone,  
Puerto Rico, and the District of Columbia. As used in this section,  
the term 'agreement' includes any amendment to any agree-  
ment."<sup>218</sup>

"o. In the licensing and regulation of byproduct material, as  
defined in section 11 e. (2) of this Act, or of any activity which  
results in the production of byproduct material as so defined under  
an agreement entered into pursuant to subsection b., a State shall  
require—

"(1) compliance with the requirements of subsection b. of  
section 83 (respecting ownership of byproduct material and  
land), and

"(2) compliance with standards which shall be adopted by the  
State for the protection of the public health, safety, and the  
environment from hazards associated with such material which  
are equivalent, to the extent practicable, or more stringent  
than, standards adopted and enforced by the Commission for  
the same purpose, including requirements and standards prom-  
ulgated by the Commission and the Administrator of the  
Environmental Protection Agency pursuant to sections 83, 84,  
and 275, and

"(3) procedures which—

<sup>217</sup>Public Law 96-295 (94 Stat. 787) (1980), sec. 205 added new subsec. "j. (2)".

<sup>218</sup>Public Law 95-604 (92 Stat. 3037) (1978), sec. 204(c), added last sentence to sec. 274n.



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mission.<sup>219</sup>

42 USC 2014.

42 USC 2022.

42 USC 2022.

Rule.

42 USC 7911.

"In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11 e. (2), the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology."<sup>220</sup>

**"Sec. 275. Health And Environmental Standards for Uranium Mill Tailings.—**

"a. As soon as practicable, but not later than October 1, 1982,<sup>221</sup> the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the 'Administrator') shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.<sup>222</sup> The Administrator may periodically revise any standard promulgated pursuant to this subsection.

"After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under title I of the Uranium Mill Tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, standards of the Administrator shall comply with, or be taken in

<sup>220</sup>Public Law 97-415 (96 Stat. 2067) (1983), sec. 19 added this paragraph.

<sup>221</sup>Public Law 97-415 (96 Stat. 2067) (1983), sec. 18 substituted "October 1, 1982" for "one year after the date of enactment of this section."

<sup>222</sup>Public Law 97-415 (96 Stat. 2067) (1983), sec. 22 added this language to sec. 275a.



EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

TASK # - 7S136

DATE- 05/29/97

MAIL CTRL. - 1997

TASK STARTED - 05/29/97

TASK DUE - 06/30/97

TASK COMPLETED - / /

TASK DESCRIPTION - SPANISH INTEREST IN AGREEMENT STATE PROGRAM

REQUESTING OFF. - OCM

REQUESTER - JLUBENAU

WITS - 0 FYP - N

PROG. - LAB

PERSON -

STAFF LEAD - LAB

PROG. AREA -

PROJECT STATUS -

OSP DUE DATE: 6/30/97

PLANNED ACC. - N

LEVEL CODE - 1