Handbook for Processing an Agreement Interim Procedure SA-700

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U.S. Nuclear Regulatory Commission

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1.0 INTRODUCTION

1.1 Purpose

This Handbook provides guidance for the preparation and review of a State request for a Section 274b. Agreement as authorized by the Atomic Energy Act of 1954, as amended (AEA). The U.S. Nuclear Regulatory Commission (NRC) staff should use the Handbook for guidance in reviewing the request or for guidance in reviewing an amendment to an existing Agreement. The State that is requesting an Agreement should use the Handbook for guidance in preparing its request.

1.2 Scope

A request for an Agreement consists of a formal request by a State's Governor, draft State Agreement, and a comprehensive description of the State's Agreement materials program with supporting information. The comprehensive description of the State's Agreement materials program should demonstrate the State's ability to regulate AEA radioactive materials under the Agreement. This Handbook addresses the supporting information that the State should include and the criteria that the NRC staff uses to evaluate it. The NRC staff must be able to reach a conclusion that the information meets the Commission's review criteria.

The different sections of the Handbook address the different areas that a State must address in submitting a request for an Agreement. Section 2.0 addresses the statutes and policies that form the basis for the guidance in the Handbook. Section 3.0 provides the detailed steps in the procedure followed by the NRC staff to evaluate the request. Section 4.0 addresses the specific supporting information needed to evaluate each element of the State's program. It provides specific criteria for evaluating the information and relates these criteria to the Commission's Criteria Policy Statement (see Section 2.2. of the Handbook below). It also includes documents related to the specific criteria. For the purpose of SA-700, "public health and safety" includes security/physical protection of agreement material. Throughout this Procedure and Handbook, whenever public health and safety is discussed, it is also understood that security/physical protection of agreement material is a part of public health and safety.

Appendix A is a cross reference table of the subsections in Section 4.0 of the Handbook to the criteria in the Criteria Policy Statement and in other guidance documents. Appendix B is a set of sample forms to guide the analysis of staffing needs in an Agreement materials program.

Appendix C is a sample process schedule for planning purposes for the State and NRC. Appendix D is a set of sample letters and documents developed while reviewing previous Agreement State requests. Appendix E discusses interacting with Tribal governmental entities during the application process.

2.0 BASIS OF THE GUIDANCE

2.1 Statutory Requirements

The guidance in this Handbook is based on the requirements of Federal statutes, Commission Policies, NRC Management Directives, NRC Inspection Manual Chapters and Inspection Procedures, and State Procedures and Tribal Procedures for the Office of Nuclear Material Safety and Safeguards (NMSS), Division of Materials Safety, Security, State and Tribal Program (MSST) Agreement State program. These are addressed in more detail below.

2.1.1 Federal Statutes

The Commission implements the Agreement State program under Section 274 of the AEA. Section 274b. authorizes the Commission to enter into an Agreement with the Governor of a State. Section 274c. and Section 274m. of the AEA specifies those regulatory authorities that must be reserved to the NRC. Sections 274d. through 274g. specify the Commission actions and obligations with respect to the agreements. A State that proposes to regulate 11(e).2 byproduct material is subject to additional requirements in Section 274o. It must also comply with the applicable requirements of the Uranium Mill Tailings Radiation Control Act (UMTRCA).

2.1.2 State Statutes

Under Section 274, Agreement States do not regulate materials for the NRC. Rather, the NRC discontinues, and the State assumes, regulatory authority. Each Agreement State administers an independent regulatory program. The State agency designated to conduct the Agreement materials program must have authority under State law to discharge its functions. The legal authority required depends on the categories of materials that the Commission transfers to the State in the Agreement. Section 4.1 of the Handbook contains details on the provisions of State law that are required. A State seeking an Agreement must submit copies of its statutes for review.

2.2 Commission Policy Statements

The Commission has adopted two policy statements applicable to the Agreement State program. They are discussed individually in the paragraphs below.

2.2.1 *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement* (46 FR 7540, 01/23/81; 48 FR 33376, 7/21/83)

Known as the "Criteria Policy Statement," it describes the specific requirements that a State must meet for the Commission to approve an Agreement. It also provides the basis for the NRC staff assessment of the State's proposed Agreement materials program. The criteria in the Policy Statement are incorporated into Handbook Section 4.0. A State program that meets the Criteria Policy Statement requirements is determined to be adequate to protect public health and safety and compatible with the NRC regulatory program.

The first 28 criteria in the Criteria Policy Statement apply to all proposed Agreement State materials programs. The last eight criteria apply only to States that request authority to regulate 11e.(2) byproduct material from, and operation of, uranium and thorium mills.

2.2.2 *Agreement State Program Policy Statement* (82 FR *48535*, 10/18/17)

This Policy Statement describes the overall principles, objectives, and goals of the Commission's Agreement State program. The NRC and State staff, when reviewing or preparing a request for an Agreement, should consider these principles, objectives, and goals.

The Policy Statement defines the terms "adequate" and "compatible" and identifies the basic program elements necessary for an adequate Agreement State program. It also establishes five categories of compatibility with criteria for each. The NRC uses the basic program elements and compatibility criteria in the review of Agreement requests and in IMPEP reviews.

2.2.3 *Tribal Policy Statement* (82 FR 2402; 1/9/17)

This Policy Statement establish principles to be followed by the NRC to promote effective government-to-government interactions with Federally recognized Tribes and encourages and facilitates tribal involvement in the areas over which the Commission has jurisdiction. The policy articulates the NRC's six principles the NRC staff should follow to promote effective government interactions with federally recognized tribes.

2.3 Management Directives and State Procedures

The NRC staff use two different types of procedures in reviewing State requests for agreements. Management Directives (MD) address activities whose responsibilities extend to more than one Office. Individual Office procedures are used for activities that are the responsibility of a single Office, such as the Office level State Procedures. The following MDs and State Procedures provide direction and guidance for the review of a request for an Agreement.

Current copies of MDs may be viewed on the NRC Internet website. State Agreement Procedures may be found on the State Communication Portal (SCP) at: https://scp.nrc.gov/.

2.3.1 Management Directive 5.1, *Consultation and Coordination with Governments and Indian Tribes*

MD 5.1 addresses general responsibilities for consultation and outreach with States, federally recognized tribes, other federal agencies, local governments, and national or regional organizations of governmental agencies. It is the policy of the NRC to ensure appropriate consultation at the earliest possible stage between the NRC and States, local governments, other federal agencies, and Indian Tribes, and national and regional associations regarding major interagency agreements, major organizational changes, major rules and regulations, statements of policy, guides, and standards, and major studies that may have a significant State or local impact.

2.3.2 NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program*

MD 5.6 provides the process and criteria for evaluating the performance of Agreement State materials programs and the NRC's materials programs. The NRC staff assessment of a request for an Agreement must conclude that the State's proposed program, if implemented as described, would be found satisfactory in all applicable IMPEP performance indicators.

2.3.3 NRC Management Directive 5.8, *Proposed 274b Agreements With States*

MD 5.8 provides guidance on drafting a proposed Agreement. The Handbook to MD 5.8 includes a model Agreement. The State should draft its proposed Agreement based on this model. Changes from the model should include additional supporting information since staff must evaluate the changes to ensure the adequacy and compatibility of the proposed Agreement materials program. State requests for subcategories or responsibility for limited activities within a category of the standard Agreement will require prior approval by the Commission before the staff begins its review of the State's request for an Agreement.

2.3.4 NRC Management Directive 5.9, *Adequacy and Compatibility of Program Elements for Agreement State Programs,* and State Agreement Procedure SA-200, *Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements*

MD 5.9 implements, in part, the Agreement State program *Policy Statement*. The objective of MD 5.9 is to establish the process the NRC staff will follow to determine when a proposed or final Commission regulation or other program element should be adopted as a legally binding requirement by an Agreement State and whether adoption is required for compatibility or health and safety. State Agreement Procedure SA-200 documents the results of the compatibility or health and safety determination for each regulation. Appendix A to SA-200 provides a link to the SCP https://scp.nrc.gov/ that provides a table of each NRC program element and its designated category (i.e., for compatibility, health and safety, reserved to the NRC, or not required to be adopted by the States) in accordance with MD 5.8.

Section V., "Guidance," Item A, includes a link to the NRC website on which there is a section-by-section summary of compatibility and health and safety categories for the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR).

2.3.5 NRC Management Directive 8.8, *Management of Allegations*

MD 8.8 provides NRC policy and procedures for management of allegations. State procedures for the management of allegations for the Agreement materials program should include the applicable elements of MD 8.8, based on State requirements and law.

2.3.6 Office of Nuclear Material Safety and Safeguards – State Procedures

State Agreement Procedures (SA) SA-100 through SA-105 and SA-107 through SA-110 provide guidance for the review of IMPEP performance indicators in Agreement materials programs. They supplement the guidance in MD 5.6. SA-106 addresses the

IMPEP Management Review Board and does not apply to the review of a request for an Agreement.

State Agreement Procedures SA-10, Joint Oversight of the National Materials Program, SA-200, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements, SA-201, Review of State Regulations, SA-300, Reporting Material Events, SA-400, Management of Allegations, SA-600, Training Criteria for Agreement State Personnel, and SA-900, Termination of Uranium Mill Licenses in Agreement States, also provide guidance that should be used when reviewing an Agreement request.

2.3.7 Office Nuclear Material Safety and Safeguards – Tribal Procedures and Manual

The Tribal Policy Manual provides basic historical information about the federal and tribal government relationship and advice on interacting with tribal governments. NMSS Procedure TR-100 describes the roles and responsibilities of the Tribal Liaisons at Headquarters and the Regional State Liaison Officers in the NRC's four regional offices regarding interactions and implementation of the consultation, outreach, and engagement with federally recognized tribes.

3.0 REVIEW PROCEDURES

3.1 General Considerations

Entering into an Agreement involves a series of steps. First, the State staff expresses interest in an Agreement and requests information. Next, the Governor sends the Chairman a "Letter of Intent," in which the Governor indicates interest in entering into an Agreement. The third step is the submission of a draft request by the State Program Director or designee for the NRC's review. The NRC provides comments to the State for resolution prior to the Governor's formal submission of a request to enter into an Agreement.

The fourth step is the submission of the formal request for an Agreement by the Governor. All significant issues identified by the NRC with the draft request should be resolved by the State before the Governor submits the formal request.

3.1.1 Proprietary, Privacy, and Security Information

All information needed to support a request for an Agreement should be in the public records of the State. Normally, States should not need to submit proprietary information or information subject to the Federal Privacy Act, or a State equivalent. The NRC can protect proprietary or Privacy Act information if the State meets the requirements of 10 CFR Part 9. Before submitting information that the State believes should be withheld from public disclosure, the State Program Director or designee should discuss the matter with the Division Director of MSST.

Security related sensitive information should not be included as part of the Agreement application because the application is a public document. Security related information and procedures should be submitted separately. In sections of the application where States describe aspects of their program, for example, pre-licensing visits or security

inspections, the State should verify that it will follow specified procedures.

3.1.2 Schedule for Processing an Agreement

The entire Agreement application process typically take 3 to 5 years from the time the Governor submits a Letter of Intent to the NRC to the time the Agreement goes into effect. During the first 2 to 3 years, the State is working to develop its application as outline in Section 4 of this Handbook plus training and qualifying its staff. Appendix C contains a sample schedule for processing the formal request for an Agreement, the last main phase of the Agreement application process. This phase usually requires about 1 year based on recent experience. The actual time required to review a request depends on the resolution of issues unique to each Agreement. The effective date of the Agreement is usually selected jointly by the NRC and the State and is often based on the fee billing cycle to avoid duplicate fees for affected licensees. A proposed date should consider the time required for the review, the signing of the Agreement, and the transfer of license files.

In the sample schedule, the overall processing milestones are stated in terms of "elapsed weeks," by each Part of the process. Starting with the sample schedule, the project manager (PM) should establish a Project Schedule with estimated dates, based on the requested date of the Agreement. The PM should update the Project Schedule routinely as milestones are met.

3.1.3 Form of the Request

The State may submit the request as electronic documents (preferred) or on paper. The request should be complete, including the Governor's letter of certification and all supporting information.

Electronic files may be in image format such as PDF files or in text format such as Microsoft Word. The State should contact the PM for further information on appropriate formats.

If the State elects to submit a request on paper, it should submit one complete copy. The NRC will scan the request into the Agencywide Document Access and Management System (ADAMS) for distribution to the review team. Photocopies of State laws, statewide procedures, etc., are acceptable if the quality of the copy allows for scanning. Note that the request and supporting information is a public document. The State should not submit any information that cannot be publicly released.

3.1.4 Questions

Routine questions about the program elements, review process, criteria, or progress of the review should be directed to the PM. Significant issues (requests other than minor clarification issues) should be submitted in writing to the PM. The PM will also inform the Branch Chief of the State Agreement and Liaison Programs Branch (SALPB) of significant issues. The State staff may also, in the same manner, contact individual members of the review team directly about comments on specific program elements. Alternately, the question will be forwarded to the review team member for response.

3.2 Expression of Interest

In response to requests for information or an expression of interest in becoming an Agreement State, the State will need the following documents:

a. Sections 11 and 274 of the AEA;

b. Suggested Legislation *Radiation Control Act*, published by the Council of State Governments[1];

c. Commission Policy Statements: *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*; *Policy Statement on Adequacy and Compatibility of Agreement State Programs*; and *Statement of Principles and Policy for the Agreement State Program*;

d. MD 5.6, *IMPEP*; MD 5.8, *Proposed 274b agreements with States*; MD 5.9, *Adequacy and Compatibility of Agreement State Programs*; and the NMSS State Agreement Procedures, SA series.

Prior to the receipt of a Letter of Intent, the Regional State Agreements Officer (RSAO) in the NRC Region in which the State is located is the NRC staff lead for responding to questions and requests for additional information. The RSAO should coordinate with MSST staff and request assistance of other NRC staff as necessary. The State should submit questions regarding Commission policy or practice in writing to the Division Director of MSST

3.3 The Letter of Intent

A Letter of Intent is a declaration by the Governor that the State is committing its resources to entering an Agreement. It should be addressed to the Chairman of the Commission.

3.3.1 Content of Letter

The letter should state a desire to enter into an Agreement and designate a contact person on the State staff. It should also suggest an effective date for the Agreement (see Appendix D, Item A, of the Handbook).

The suggested effective date for the Agreement should take into consideration the time requirements for any needed legislation, regulations, and program specific procedures. It should also consider the time needed for recruitment, training, and qualification of program staff.

[1] Council of State Governments, Suggested State Legislation, 1983, Volume 42; The Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578; telephone: (859) 244-8000

3.3.2 Response to Letter

When the NRC receives a Letter of Intent, the Branch Chief of SALPB assigns a MSST staff member to be the PM for processing the Agreement request.

3.3.2.1 Acknowledgment Letter

The PM prepares a response letter acknowledging receipt of the Letter of Intent. The response letter should be prepared for the signature of the Chairman (see Appendix D, Item B, of the Handbook).

3.3.2.2 State Preparation of the Request for an Agreement

The PM coordinates with the RSAO and with the State contact on actions to prepare a draft request. The PM responds to State requests for assistance and coordinates any informal staff review or agency review of State information. The PM tracks the State's progress in preparing the request for an Agreement. The PM provides current information about the State's progress to other NRC staff for budget development and work planning.

3.3.2.3 Initiating Contact and Interacting with Tribal Governmental Entities During the Application Process

The PM contacts the Materials Safety and Tribal Branch (MSTB) branch chief to assign a tribal liaison to identify tribal governmental entities that may be interested in the State's application. Further discussion of the procedures for interacting with tribal governmental entities is discussed in Appendix E of the Handbook. However, the tribal liaisons should plan to determine the federally recognized tribes and engage early in the process.

3.4 The Draft Request

Submitting a draft of the application package for an Agreement aids early identification of significant issues and areas where more information is needed.

3.4.1 Early Review of Legislation and Regulations

It usually requires a considerable amount of time to enact State legislation or to adopt regulations. The State should consider submitting these elements to the NRC for review well before the draft request. Early review by MSST and OGC can allow time for amendments to critical legislation or regulatory provisions, if required.

3.4.2 Notification of Draft Request

When the State notifies MSST that a draft request is forthcoming, the NRC establishes a review team. State Agreement Procedure SA-700 addresses timing of the notification and the composition of the review team. The PM selects a principal reviewer for each program element of the proposed Agreement materials program.

3.4.3 Review of the Draft Request

The review team conducts a completeness review of the draft request using the evaluation criteria in Section 4.0 of the Handbook, based on the Criteria Policy Statement. The review team's completeness review has two objectives. First, the review team determines whether the Agreement materials program description addresses each of the applicable elements. Second, the review team evaluates whether the request contains sufficient information to permit the review team to conduct a detailed review of the application.

3.4.3.1 Completeness Evaluation

Each principal reviewer evaluates the completeness of his or her assigned program element. Other team members may help in evaluating the completeness of elements. The evaluation should be completed within about 8 weeks (see Appendix D, Item C, of the Handbook).

3.4.3.2 Team Meeting

The review team should meet to discuss the findings of its completeness review. The review team should also draft a letter to the Program Director or designee, presenting team findings. The individual review team members should concur on the completeness of each program element. The review team should complete its review, draft a completeness review letter, and brief the Division Director of MSST on the completeness review findings within 8 weeks of receipt of the draft request from the State.

3.4.3.3 Review Product

The principal review product is a completeness review letter to the Program Director or designee. If the draft request is complete, the letter should state that the NRC staff believes the request is ready for submission. If the draft request is incomplete, the letter includes the team's comments.

If the draft request is incomplete, the review team should also hold a video or conference call with the State staff to discuss the information that is incomplete or needed. The team may hold additional meetings with the State staff at the State's option, following the State's receipt of the review team's letter.

The final letter to the State is signed by the MSST Director. As discussed in Section 3.4.3.2 above, the review team should complete its review and documentation within 8 weeks of receipt of the draft request from the State.

3.4.4 Periodic Conference Calls

The PM, RSAO, Branch Chief of SALPB, and the State Program Director or designee should establish a schedule of periodic video or conference calls. The calls should start during the review of the draft request. Subjects of the conference calls should include progress of the review, issues identified during the review, and any needed additional information needed. Participants should include the PM, RSAO, and the Program Director or designee. Other NRC and State staff should participate as appropriate. The review team members for each specific program element that will be discussed should

also be present during the calls. Calls should be planned for at least monthly and can be adjusted to meet the needs of the State or the review team.

3.4.5 Meetings and Visits

The PM and the RSAO should visit the State offices to gain first-hand knowledge of the State facilities and staff. If possible, the visit should be after the State has received the completeness review letter and has had time to review the comments. This will give the State an opportunity to discuss the NRC's comments in preparation for finalizing the formal request. The State Program Director or designee and senior State staff members should also visit both the NRC regional and headquarters offices. The PM and the RSAO should also coordinate and schedule meetings and visits during the State's preparation of a request, as necessary.

3.4.6 Inspection and Licensing Staff Contacts

State inspectors should accompany NRC inspectors during inspections of the NRC licensee facilities in the State. This helps the State inspectors to develop technical skills needed for inspections and provides knowledge about licensee's operations that will transfer under the Agreement. The State inspectors may accompany the NRC before a submission of a Letter of Intent. After the Letter of Intent is submitted, State inspectors should accompany NRC inspectors on a regular basis. The NRC inspectors should work closely with the State to establish inspection schedules. The State can also consider contacting other nearby Agreement States regarding accompanying inspectors in those States to gain additional inspection experience.

State license reviewers should work with the NRC regional license reviewers, starting at least 1 year before the anticipated effective date of the Agreement. This will help State license reviewers become more familiar with the licensing process and with the licenses that will transfer under the Agreement. The license reviewers should begin coordination at least when the Governor submits the Letter of Intent. The State can also consider contacting other nearby Agreement States to gain general licensing assistance.

The RSAO leads coordination of these activities with the regional licensing and inspection staff. The RSAO should coordinate with the PM to help resolve any issues that arise regarding these activities.

3.5 The Formal Request for an Agreement

The formal request should be a modification of the draft request application package as modified to address NRC comments. The AEA requires that the Governor sign the formal request. The Governor sends a "letter of certification" with the formal request, certifying that the State has an adequate and compatible regulatory program for the specified categories of Agreement materials requested under the Agreement. The Governor addresses the letter to the Chairman of the Commission (see Appendix D, Item D, of the Handbook).

The Chairman writes to the Governor acknowledging receipt of the formal request and committing the NRC to complete a timely review (see Appendix D, Item E, of the Handbook).

In order for an Agreement to be approved under the AEA, the information supplied in a request for an Agreement must support two findings by the Commission. First, the Commission must find that the State has an Agreement materials program that is adequate to protect public health and safety. Second, it must also find that the program is compatible with the NRC materials program. The Commission bases its findings on the NRC staff assessment.

The staff assessment documents the review team's evaluation of the State's application package. The assessment should describe how the program satisfies the Commission's criteria. The table in the Handbook, Appendix A, shows the relationship between the program elements in Section 4.0 of the Handbook and the criteria in the Criteria Policy Statement.

3.5.1 Project Schedule Adjustment

The sample processing schedule in Appendix C of the Handbook estimates 8 weeks for the State to prepare and submit the formal request. This is an estimate of the time required based on experience. It is not a requirement. The State should submit the formal request as soon as practical following incorporation into the application of any changes resulting from the completeness review. The PM should adjust the Project Schedule to reflect the actual date MSST receives the formal request.

3.5.2 Review of the Formal Request

The same review team that reviewed the draft request for completeness should also review the formal request. The review team conducts a detailed review of the program description information in the formal request and verifies that each comment on the draft request during the completeness review has been completely addressed and that there are no further questions.

3.5.2.1 Review of Program Elements

Each review team member conducts a detailed evaluation of specific program element(s) of the proposed program assigned to that member. Other team members may also help evaluate the element. Review team members may discuss their questions about the formal request directly with the State staff; however, the PM should be informed of communications with the State.

Using the evaluation criteria in the Handbook, Section 4.0, estimates the review of the formal request should take about 4 weeks.

3.5.2.2 Major Issues

A major issue is one that raises questions about the adequacy or compatibility of the proposed State Agreement materials program. The review team member(s) should notify the PM immediately upon identification of a major issue(s). The PM informs the Branch Chief of SALPB and schedules a meeting of the team to discuss the issue(s). After the meeting, the team briefs the Division Director of MSST, and other management as needed. The State Program Director or designee and Director of MSST are kept informed of the staff activity to resolve major issues.

3.5.2.3 Team Findings and Draft NRC Staff Assessment

Once the review team completes their review of the formal request and determines that the State's request satisfies all criteria given in the Criteria Policy Statement for each program element, the PM prepares the draft NRC staff assessment. It is estimated that this step could take up to 2 weeks (see Appendix D, Item F, of the Handbook). The review team members should concur on the findings for the program element that they reviewed and the draft staff assessment. The draft staff assessment should be completed by the PM in about 4 weeks, as discussed in Section 3.5.2.1 above.

If the request does not satisfy the criteria given in the Criteria Policy Statement, the PM prepares comments that the State must address (see Section 3.5.3, “Transmission of Comments to the State,” below).

3.5.3 Transmission of Comments to the State

If the request does not satisfy a Criteria Policy Statement criterion, the review team member prepares a draft comment. Each comment should describe the issue and, where practical, provide guidance to resolve the issue.

The PM prepares a letter transmitting its comments, if any, on the formal request. The letter is signed by the Director of MSST and addressed to the State Program Director or designee. This step is part of the review team's work discussed in Section 3.5.2.1 and Section 3.5.2.3 above.

The State should address the comments by submitting revised pages or sections to the formal request. The PM and the review team reviews the revisions submitted by the State to ensure the State addressed the NRC’s comments. The PM should update the schedule as needed based on when the comments are addressed by the State.

3.5.4 Completion of the Review

When the review team concludes that all criteria in the Criteria Policy Statement are addressed, the PM completes the draft staff assessment. The PM also completes the Commission paper that contains all supporting documents including the draft *Federal Register* notice and the following documents as background: (a) draft Congressional letters; (b) draft press release; and (c) draft Federal agency letters (see Appendix D, Items G, H, I, J, and K, of the Handbook).

Procedures for the publication of the proposed Agreement, and for the approval, signing, and implementation of the final Agreement, are provided in Section V. of State Procedure SA-700.

4.0 INFORMATION NEEDED AND EVALUATION CRITERIA

This section addresses the information that the NRC needs in order to review an Agreement request and the evaluation criteria that staff will use as a baseline. This is based on the Criteria Policy Statement and includes cross references in brackets to specific criteria applicable to the topic. Additionally, references are provided to assist the State in preparing its Agreement request.

4.1 Legal Elements

The AEA does not permit the Commission to delegate its authority to the States. Under the AEA, the NRC relinquishes, and the Agreement State assumes, regulatory authority over the radioactive materials specified in the Agreement. The State administers independent regulatory programs under State Statutes and regulations. Each State program must derive its authority from its own State law.

4.1.1 Authority to Establish a Program and Enter into an Agreement

State laws should provide specific elements of authority to the Agreement materials program. In 1983, the Council of State Governments published a generic model Radiation Control Act in *Suggested State Legislation*, Volume 42. States may, but are not required to, use the Suggested State Legislation as models for their own laws.

4.1.1.1 Information Needed

For all categories of materials for which the State is requesting authority, the State should submit State law that:

a. Establishes the Agreement materials program, defines its structure, and authorizes the Governor to enter into an Agreement with the Commission;

b. Authorizes the program to issue licenses, including the following:

   1. Authorizes the program to impose additional license requirements;

   2. Authorizes the program to give exemptions from licensing requirements;

   3. Authorizes the program to recognize the licenses of other jurisdictions (that is, reciprocity);

   4. Makes it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license; and

   5. Authorizes the program to recognize licenses transferred from the NRC under the Agreement as State licenses.

c. Authorizes the program to adopt regulations.

   1. Specifies the procedures and requirements for adoption of regulations, including public participation; and

   2. Allows the program to impose requirements in the form of other generic legally binding requirements, such as license conditions or orders.

d. Authorizes representatives of the program to enter premises and conduct inspections.

e. Authorizes the program to require compliance with regulatory requirements by both licensees and unlicensed individuals.

f. Authorizes the program to impose sanctions for violations of the regulations, orders, or license conditions.

g. Establishes conflict of interest and ethics regulations or procedures applicable to those portions of the State radiation control program covered by the Agreement.

If the program will include jurisdiction for licensing the receipt of low-level radioactive waste (LLRW) from others for purposes of disposal, the State should submit the law that authorizes the regulation of a LLRW disposal site.

If the program will include the regulation of byproduct material as defined in Section 11e.(2) of the AEA, the State should submit the State law that authorizes the regulation of uranium and thorium milling facilities, including disposal of mill tailings.

4.1.1.2 Evaluation Criteria

Note: The team may use the Council of State Government Suggested State Legislation (model legislation) as guidance. However, the State is not required to follow either the content or the format of the model legislation. Section 9 of the model legislation covers LLRW disposal. Section 8 of the model legislation covers Section 11e.(2) byproduct material.

a. State law must authorize the Governor to enter into an Agreement. It must also designate a radiation control agency and provide it the necessary legal authority to be effective. [Criteria number from Policy Statement: 1, 12, 19, 23, 24, 25]

b. State law must not create duplications, gaps, or conflicts in regulation. This includes duplications, gaps, or conflicts between the State and the NRC, State agencies, or State and local agencies. The law must not seek to regulate materials or activities reserved to the NRC. [1, 2, 21, 24, 25, 28]

c. State law must authorize issuing licenses as the means of giving the authority to possess and use Agreement materials. It should also authorize the reciprocal recognition of specific licenses issued by the NRC or other Agreement States. [12, 13, 14. 27]

d. State law should authorize the use of license conditions to address matters unique to the licensee. The law should allow license conditions to impose additional requirements when required to protect public health and safety. If the law restricts the use of license conditions, the State should show that they can provide adequate protection under the restrictions. The protection should be at least equivalent to using license conditions and orders. [1, 12]

e. The law should permit exemptions from licensing requirements if the exemptions do not adversely affect public health and safety. This should include exemption(s) from the requirement to obtain a license. The law should authorize exemptions from licensing substantially equivalent to the following (or such exemptions must be included in the State's regulations). [12, 28]

    1. Prime contractors working for the U.S. Department of Energy (DOE) at

U.S. Government-owned or controlled sites;

2. Prime contractors researching, developing, manufacturing, storing, testing, or transporting atomic weapons or components;

3. Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and

4. Any other prime contractor (or subcontractors) of DOE or NRC when the State and NRC jointly determine (i) that the terms of the contract provide adequate assurance that the contractor can accomplish the work without undue risk to public health and safety and (ii) that the law authorizes the exemption.

f. The law must authorize the Agreement materials program to enforce regulations or generic legally binding requirements other than regulations. The law may authorize another agency (such as a board of health) to adopt the regulations. When appropriate, the law should provide for public participation. [19, 23]

g. The law must authorize inspections of licensee operations to ensure compliance with regulatory requirements. It should authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials. The law should permit access at all reasonable times. [17]

h. The law must provide authority to take prompt enforcement action and should provide a variety of legal sanctions. The law should provide authority to suspend licenses and to impound materials. In cases of an imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing. [19, 23]

i. The law should authorize suspension or revocation of a license for repeated or continued noncompliance. The authority to suspend or revoke a license may be conditioned on a prior administrative or judicial hearing. The program should also have authority to seek injunctive relief and refer licensees for criminal prosecution. The program should also consider authority to impose civil or administrative monetary penalties. [19, 23]

The State must resolve any questions the NRC has regarding interpretation of State law. Interpretations of State law must be provided by the State Attorney General, or other attorney designated as legal advisor to the Agreement materials program.

4.1.1.3 <u>Additional Evaluation Criteria for Low-level Waste Agreements</u>

The law must authorize appropriate restrictions on land ownership and use of sites used for disposal of LLRW for an indefinite period after closure of the site. [9b]

4.1.1.4 <u>Additional Evaluation Criteria for 11e.(2) Byproduct Material Agreements</u>

The law should clearly authorize the Agreement materials program to carry out the requirements of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA).

Specifically, the law should:

a. Authorize the Agreement materials program to regulate 11e.(2) byproduct material; [29]

b. Authorize the Agreement materials program to require licensees to provide a financial surety arrangement. The arrangement should be such that sufficient funds will be available to cover the costs of both decommissioning and long-term surveillance and maintenance; [29]

c. Require the program, before issuing an 11e.(2) byproduct material license, to do the following:

    1. Give notice of the proposed licensing action and accept written comments during a public comment period; [29]

    2. Prepare a written analysis of the impact on the environment of the licensed activity; [31]

    3. Hold a public hearing with a transcript and cross examination; [29]

    4. Prepare a written decision based on evidence presented during the public comment period. The decision must be subject to judicial review; and [29]

    5. Ban major construction before the completion of the written environmental analysis.

d. Require the Agreement materials program to provide an opportunity for public participation through written comments or public hearings during rulemaking. The law must also make rules subject to judicial review; and [29]

e. Require the Agreement materials program, before terminating an 11e.(2) byproduct material license, to do the following:

    1. Transfer funds collected for decommissioning and long-term surveillance and maintenance to the United States. The law must require this transfer when custody of the disposal site transfers to the United States. Funds transferred must include all funds collected from a licensee or its surety. The only exceptions are funds collected for decommissioning if it is completed; [29]

    2. Choose whether or not to take title to the disposal site and byproduct material; and [29]

    3. Obtain a determination from the Commission that all applicable standards are satisfied. [30]

The State law must consider the authorities reserved to the NRC under UMTRCA (see 10 CFR 150.15(a)), including the authority to: [30]

a. Establish minimum standards governing reclamation, long-term surveillance or

maintenance, and ownership of the 11e.(2) byproduct material;

b. Determine, before the termination of a license, that the licensee has complied with decontamination, decommissioning and reclamation standards, and ownership requirements for sites at which 11e.(2) byproduct material is present;

c. Require, before termination of a license for 11e.(2) byproduct material or for any activity that results in the production of such material, that the title to the 11e.(2) byproduct material and the disposal site are transferred to the federal government (or the State at the option of the State, provided the State exercises the option before termination of the license);

d. Require monitoring, maintenance, and emergency measures after the license is terminated as may be necessary to protect the public health and safety for those materials and property for which the State has assumed custody;

e. Permit use of the surface or subsurface estate, or both, of the disposal site land transferred to the United States or the State; and

f. Exempt land ownership transfer requirements of Section 83(b)(1)(A) of the AEA.

4.1.1.5 References

a. Criteria Policy Statement, criteria 1, 2, 9b, 12, 13, 14, 17, 19, 21, 23, 24, 25, 27,28, 29, 30, and 31

b. Council of State Governments *Suggested State Legislation*, 1983, Volume 42

c. *Agreement State program Policy Statement* (82 FR 48535, 10/18/17)

4.1.2 Organization of the Proposed Program

The organization of an Agreement materials program provides the basic organizational structure and resources to conduct the program activities. The Agreement materials program organization thus influences the ability of the program to protect public health and safety against radiation hazards.

4.1.2.1 Information Needed

The State should submit a concise narrative description of the materials program. The narrative should include:

a. A brief history of radiation control in the State;

b. A description of the current structure of the program, including regional offices;

c. Individual discussions of each of the program elements in Section 4.0 of the Handbook; and

d. For each program element, cross references to the pertinent portions of the States' supporting documentation for the application.

The State should submit organization charts. The charts should show:

a. All organizational levels between the Governor and the Program Director or designee;

b. The organizational structure and staff of the Agreement materials program; and

c. Regional offices and staff, if any.

The State should submit a copy of each Memorandum of Understanding (MOU) that will affect the Agreement materials program.

4.1.2.2 Evaluation Criteria

The organization of the Agreement materials program must cover all of the program elements in this Handbook, Section 4.0. For this criterion, it is only necessary to show that responsibility for each program element is assigned to a unit of the organization. [1]

The State may divide the program elements among separate agencies. If State law does not specify the division, the State should describe how it divides the regulatory responsibility. The State should submit copies of MOU's describing the responsibilities of each agency. MOU's should also include a discussion of efforts that will be made to assure cooperation and to ensure an orderly and consistent regulatory approach between the separate agencies. The organization charts should clearly show the position of the Agreement materials program within the State government structure. [1, 24, 33]

The Agreement materials program organization charts should show both the technical staff and support staff positions. They should show positions assigned to the program both full time and part-time. If the Agreement materials program uses the resources of another agency, the Agreement materials program narrative description should detail the relationship. The narrative description should also discuss any use of contract services and advisory bodies. (NOTE: the criteria for evaluation of the technical staff are in Section 4.6.1 of the Handbook.) [1]

4.1.2.3 References

a. Criteria Policy Statement, criteria 1, 24, and 33

b. Program descriptions of existing Agreement States (from IMPEP reports or previous Agreement requests)

c. NRC Management Directive 5.9, *Adequacy and Compatibility of Program Elements for Agreement State Programs*

d. State Agreement Procedure SA-200, *Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements*

4.1.3 Content of the Proposed Agreement

Under an Agreement, a State may assume the authority to regulate any one or more of the following categories of materials within the State:

a. Byproduct materials as defined in section 11e.(1) of the AEA;

b. Byproduct materials as defined in section 11e.(2) of the AEA;

c. Byproduct materials as defined in section 11e.(3) of the AEA;

d. Byproduct materials as defined in section 11e.(4) of the AEA:

e. Source materials; and/or

f. Special nuclear materials, in quantities not sufficient to form a critical mass.

In addition, under an Agreement, a State may assume the specific authority to conduct one or more of the following activities, which otherwise remain under the NRC jurisdiction:

a. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;

b. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in the regulations or orders of the Commission.

MD 5.8 contains a standard Agreement format and text. The standard Agreement is based on a state's assumption of all categories of materials (known as a "full Agreement"). Agreements that do not include a state's assumption of all of the categories (known as a "limited Agreement") should delete the appropriate provisions as shown in MD 5.8, Handbook. If a State requests only a subcategory of Agreement material within a category, the State must submit detailed information as to why this request is needed and supporting justification. Staff must obtain Commission approval for any such requests.

4.1.3.1 Information Needed

The State should submit a proposed Agreement. The Agreement should contain the categories of materials and specific authorities that the State wants to regulate.

The Agreement should follow the format and content of the standard Agreement in the Exhibit of MD 5.8, Handbook. If the State does not follow the standard Agreement, it should explain why.

The State should provide detailed information regarding the intent of this difference from the standard Agreement and the expected outcome.

4.1.3.2 Evaluation Criteria

The proposed Agreement must be consistent with the purpose of Section 274 of the AEA. It must promote an orderly pattern of regulation. Nothing in it may create a duplication, conflict, or gap in the nationwide program for the regulation of materials. [27]

The Agreement should be consistent with the format and content of the standard Agreement in MD 5.8. The State should delete or modify articles in the standard Agreement only as shown in MD 5.8. Any other change requires additional information describing why the change is needed and supporting justification. Such changes will require separate approval by the Commission. The information submitted must provide a basis for the Commission to approve the change. [27]

Under an Agreement, a state must assume regulatory authority over all licensees in each category of materials listed in the Agreement. If the Agreement does not include all categories of materials and specific authorities, it should include Article III of the standard Agreement (see the exhibit to the Handbook in MD 5.8). [27]

4.1.3.3 References

a. Criteria Policy Statement, criterion 27

b. NRC Management Directive 5.8, *Proposed 274b agreements With States*

4.2 Regulatory Requirements Program Elements

A State may adopt regulatory requirements in a State specific format or adopt the NRC regulations by reference. Alternately, the State may use the *Suggested State Regulations (SSR)*, published by the Conference of Radiation Control Program Directors, as a model for its regulations.

4.2.1 Regulations or Legally Binding Requirements

The regulatory requirements needed for compatibility are those required for 1) the standards for the protection against radiation; 2) cross jurisdiction boundaries; and 3) the orderly pattern of regulation. The State's proposed regulations must satisfy the criteria for compatibility categories A, B and C, respectively. The criteria are given in the Handbook to MD 5.9. A list of program elements and their compatibility designation is provided in State Agreement Procedure SA-200, Appendix A, for all required regulations in Parts 19, 20, 30 – 39, 40, 61, 70, 71, and 150.

The state must adopt program elements that embody the basic health and safety aspects of the NRC's program elements because of particular health and safety significance. These are the NRC program elements that are not required for compatibility but have been identified as having a particular health and safety role in the regulation of agreement material within the State. The State should adopt program elements based on those of the NRC that embody the essential objective of the NRC program elements. Examples are given in MD 5.9, Handbook.

4.2.1.1 Information Needed

The State should submit its regulations or generic legally binding requirements required for adequacy and compatibility. The State should submit its regulations or generic legally binding requirements for all categories of material being requested under the Agreement. The State should also submit a "cross-walk" that provides the equivalent State regulation for each NRC regulation.

If the State wants to regulate the disposal of LLRW at a land disposal site, it should submit its regulations equivalent to 10 CFR 61.41, 61.42, and 61.43. If a State does not plan to regulate the disposal of LLRW at a land disposal site, it still needs to submit its regulations equivalent to 10 CFR 61.55, 61.56, and 61.57 regarding the requirements for classification, characteristics, and labeling of radioactive waste.

If the State wants to regulate uranium and thorium mill tailings, it should submit a copy of its requirements equivalent to 10 CFR Part 40, Appendix A.

4.2.1.2 Evaluation Criteria

The State regulations must satisfy the criteria for all adequacy and compatibility categories. The criteria are given in the Handbook to MD 5.9. A list of program elements and their compatibility or adequacy designations is provided in State Agreement Procedure SA-200, Appendix A. Appendix A includes a link to a table with the adequacy or compatibility designation assigned to each regulation required in Parts 19, 20, 30 – 39, 40, 61, 70, 71, and 150. Additional guidance for submitting State regulations for NRC review is provided in State Agreement Procedure SA-201, *Review of State Regulatory Requirements*. [1, 2, 3, 4, 5, 6, 7, 8, 9a, 10, 11, 22, 32]

The State's regulations must apply to all categories of materials covered by the Agreement. The regulations should also apply to all other sources of radiation regulated by the State and must require consideration of the total occupational dose to individuals. [2, 4]

The State adopts the NRC regulations by reference, the State rule should disclaim any intent to regulate materials or activities over which the NRC retains jurisdiction. If the State adopts generic legally binding requirements other than regulations, the program staff should apply generic legally binding requirements consistently. The requirements should not confuse either the licensees or the regulatory program staff. The State must show that the alternative requirements are legally binding under State law. [23]

4.2.1.3 References

a. Criteria Policy Statement, criteria 1, 2, 3, 4, 5, 6, 7, 8, 9a, 10, 11, 22, and 32

b. NRC Management Directive 5.9, *Adequacy and Compatibility of Program Elements of Agreement State Programs*

c. State Agreement Procedure SA-200, *Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements*

d. State Agreement Procedure SA-201, *Review of State Regulatory Requirements*

e. Applicable sections of 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61, 70, 71, and 150

f. Conference of Radiation Control Program Directors, *Suggested State Regulations*

4.3 Licensing Program Elements

After reviewing the State's technical procedures the review team should determine whether the technical licensing procedures are thorough, complete, consistent, and of acceptable technical quality to address health and safety. The State's procedures should include requirements for pre-licensing verification and for ensuring enhanced security requirements are in place prior to issuing a license, where these requirements are necessary. A State may adopt technical licensing procedures modeled on the NRC procedures or those used by an existing Agreement State.

Nontechnical administrative procedures are usually not key contributors to program performance. The review team usually reviews samples of these procedures. The team only needs to conclude that the State has written administrative procedures for licensing and that they contain no obvious major defects.

4.3.1 Procedures for the Technical Evaluation of Proposed Uses of Radioactive Material

The technical procedures address the radiation safety issues necessary for the safe and secure storage, possession, and use of the licensed materials. They do not address license fees, license file maintenance, or other materials program administrative issues.

4.3.1.1 Information needed

The State should submit its technical licensing procedures. If not part of the procedures, the State should include standard review plans, checklists, and licensing guides.

4.3.1.2 Evaluation criteria

The technical procedures should be detailed and complete so that State program staff can perform a comprehensive evaluation of the application. The procedures should cover each type of license (by program code) for which an NRC licensee will transfer to the State. Guidance documents, or copies of the procedures containing guidance, should be available to license applicants. [1, 13, 14, 15, 20, 23]

The procedures should:

a. Address assessment of the applicant's facilities and safety equipment, training and experience in the use of the materials for the purpose requested, and proposed managerial controls; [7,13, 14,]

b. Address security requirements for radioactive materials with Part 37 quantities of concern and pre-licensing visits for the following:

   1. New entities that do not have an existing Agreement State or NRC license;

2. Licensees changing ownership to an unknown entity; or
3. Licensees that are significantly expanding the size or scope of their existing license. [1, 13]

c. Provide for information exchange between the program's inspection staff and licensing staff; and [1]

d. Specify the required qualifications of license reviewers for each license program code. Alternately, the procedures may reference a staff qualification plan. [20]

State procedures should provide guidance for the evaluation of technical issues in license applications. The issues evaluated should include places and conditions of storage, and places and conditions of use and decommissioning of facilities and equipment. Evaluation of the places of storage and use should address environmental considerations. State procedures for evaluating the conditions of storage and use should address safety equipment and security against unauthorized removal. Procedures for evaluating the conditions of use should address the following: [8, 13, 14]

a. Qualification of users;

b. Licensee operating and emergency procedures;

c. Appropriate surveys;

d. Personnel monitoring under the close supervision of technically qualified individuals; and

e. Preparations for transport.

Procedures for evaluating decommissioning should address decontamination, disposal, and any restrictions on the future uses of the property. The procedures should also address funding and sureties. [9a, 13]

In licensing research and development, medical uses, or other activity involving multiple uses of materials, the State may issue broad scope licenses without evaluating each specific use. [13]

The team may use the NRC procedures and consolidated guidance to evaluate the State procedures. However, the NRC does not require States to adopt the NRC procedures and consolidated guidance. The State procedures should provide the same level of detail as the equivalent NRC procedure. The State's procedures should address all significant technical issues.

4.3.1.3 <u>References</u>

a. Criteria Policy Statement, criteria 1, 7, 8, 9a, 13, 14, 15, 20, and 23

b. NRC Management Directive 5.6, *IMPEP*

c. State Agreement Procedure SA-104, *Reviewing the Common Performance Indicator, Technical Quality of Licensing Actions*

d. NUREG-1556, *Consolidated Guidance About Materials Licenses* (all volumes)

e. Decommissioning references: NUREG-1757, Consolidated Decommissioning Guidance; NUREG-1575, Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)

4.3.2 Procedures for the Evaluation of Radiation Safety Information on Sealed Sources and Devices and Registration for Distribution

Sealed sources and devices containing sealed sources are commonly manufactured in one jurisdiction and used in others. Because of the transboundary implications, safety evaluations of the sources and devices should be conducted according to similar procedures nationwide. If the State is requesting authority to perform reviews of sealed source and device applications, the State should address the information in this section.

4.3.2.1 Information Needed

The State should submit its procedure for evaluating radiation safety information for sealed sources and devices. If the State will use contractor assistance in the evaluation, its procedures for the quality assurance of contractor performance should be submitted.

4.3.2.2 Evaluation Criteria

The State procedures should be essentially identical to the equivalent NRC procedures with respect to: [13, 23]

a. Technical issues evaluated;

b. Technical criteria used to decide the adequacy of the safety information provided;

c. Use of a concurrence review; and

d. Content and format of the registration sheets.

For additional criteria, see the Handbook to MD 5.6, *IMPEP*, Non-Common Performance Indicator – Sealed Source and Device Evaluation Program. The review team may use the NRC's consolidated guidance about applications for Sealed Source & Device evaluation and registration in NUREG-1556, Volume 3, as a guide.

4.3.2.3 References

a. Criteria Policy Statement, criteria 13 and 23

b. NUREG-1556, Volume 3, *Consolidated Guidance About Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration*

c. NRC Management Directive 5.6, *IMPEP*

d. State Agreement Procedure SA-108, *Reviewing the Non-Common Performance Indicator, Sealed Source and Device Evaluation Program*

4.3.3 Procedure for Conducting the Evaluation of a Regulatory Program for a Low-Level Radioactive Waste Land Disposal Site

The regulatory program for a commercial land disposal site for LLRW Land Disposal Site has significant health and safety implications. It requires substantial resources beyond those needed for conducting routine licensing evaluations and inspections. If the State will regulate a site, it should have the resources and procedures to conduct a site license evaluation and inspection program, even if the NRC will transfer an established site.

If the NRC will not transfer a licensed site or an application for a site license, and there is no reasonable expectation of an application for a license being submitted in the foreseeable future, the State may assume the authority without having the resources and procedures in place. In this case, information showing that the State has the authority to acquire the resources and adopt appropriate procedures before undertaking the evaluation of an application, accompanied by the conceptual description of the program, is sufficient.

4.3.3.1 Information Needed

The State should submit a concise description of its program for regulating a commercial land disposal site. The description should include a discussion of the resources available to the program. The State should also submit its procedures for conducting the technical licensing evaluation and inspection program. If the State proposes to use contractor assistance in the evaluation, procedures for the quality assurance of contractor performance should be submitted.

4.3.3.2 Evaluation Criteria

The State procedures should contain the same level of detail as the NRC procedures in:

a. NUREG-1199, *Standard Format and Content for the Review of a License Application for a LLRW Disposal Facility*;

b. NUREG-1200, *Standard Review Plan for the Review of a License Application for a Low- Level Radioactive Waste Disposal Facility*;

c. NUREG-1274, *Review Process for LLRW Disposal License Applications Under LLRW Policy Amendments Act*; and

d. NUREG-1300, *Environmental Standard Review Plan for the Review of a License Application for a Low-Level Waste Disposal Facility* [This document is for the NRC staff use in conducting environmental reviews of applications for LLRW disposal facilities. The State might find the information useful in submitting its program information for LLRW, if requesting this authorization.]

However, the NRC does not require the procedures to be identical if they address all significant objectives. The State procedures should be consistent with the NUREG with respect to the following: [9b, 13]

a. Technical issues evaluated;

b. Qualifications of the personnel performing evaluations;

c. Assuring the quality of the licensing action; and

d. Inspection procedures, including security related inspections.

4.3.3.3 References

a. Criteria Policy Statement [as amended in July 21, 1983, 48 FR 33376)], criteria 9b and 13

b. NUREG-1199, *Standard Format and Content for the Review of a License Application for a LLRW Disposal Facility* [ADAMS accession number ML121240809]

c. NUREG-1200, *Standard Review Plan for the Review of a License Application for a LLRW Disposal Facility* [ADAMS accession number ML061370484]

d. NUREG-1300, *Environmental Standard Review Plan for the Review of a License Application for a Low-Level Waste Disposal Facility* [ADAMS accession number ML053010347]

e. NUREG-1274, *Review Process for LLRW Disposal License Applications Under LLRW Policy Amendments Act* [ADAMS accession number ML13217A156]

f. NRC Management Directive 5.6, *IMPEP*, Non-Common Performance Indicator – LLRW Disposal Program

g. State Agreement Procedure SA-109, Reviewing *the Non-Common Performance Indicator, LLRW Disposal Program.*

4.3.4 Procedure for Conducting the Evaluation of a Regulatory Program for 11e.(2) Byproduct Material Including Uranium or Thorium Milling Facilities

The regulatory program for 11e.(2) byproduct material including a uranium or thorium milling facility has significant health and safety implications. It requires substantial resources beyond those needed for conducting routine licensing evaluations and inspections. If the State will regulate a site, it should have the resources and procedures to conduct a site evaluation and inspection, even if the NRC will transfer an established site.

If the NRC will not transfer a licensed site or an application for a site license, and there is no reasonable expectation of an application for a license being submitted in the foreseeable future, the State may assume the authority without having the resources and procedures in place. In this case, information showing that the State has the authority to acquire the resources and adopt appropriate procedures before undertaking the implementation of a program, accompanied by the conceptual description of the program, is sufficient.

4.3.4.1 Information Needed

The State should submit a concise description of its program for regulating 11(e).2 byproduct material. The description should include a discussion of the resources available to the program. The State should also submit its procedures for conducting the technical licensing evaluations and inspections. If the State will use contractor assistance in the evaluation, it should submit procedures for assuring the quality of contractor performance.

4.3.4.2 Evaluation Criteria

The State procedures should contain the same level of detail as the equivalent NRC procedures. However, the NRC does not require the procedures to be identical to the NRC's if the State's procedures address all significant technical issues. The State procedures should be consistent with the NRC procedures with respect to the following: [29, 30, 31, 32, 33, 34, 35]

a. Technical issues evaluated;

b. Qualifications of the personnel performing evaluations;

c. Ensuring the quality of the licensing action; and

d. Inspection procedures, including security related inspections.

4.3.4.3 References

a. Criteria Policy Statement, criterion 29, 30, 31, 32, 33, 34, 35

b. Uranium Recovery Regulations, Guidance, and Communications

   The number of documents is too extensive to list in this document, but the relevant information can be found at https://www.nrc.gov/materials/uranium-recovery.html

c. NRC Management Directive 5.6, *IMPEP*, Non-Common Performance Indicator – Uranium Recovery Program

d. State Agreement Procedure SA-110, *Reviewing the Non-Common Performance Indicator, Uranium Recovery Program*

4.3.5 Procedures for Assuring the Technical Quality of Licenses

A secondary review of license applications is beneficial for quality assurance purposes and can be used to evaluate the completeness of initial reviews of license applications. Peer and supervisory review are commonly used. Larger programs may use a committee to conduct reviews of selected application evaluations recently completed. Other forms of effective quality assurance programs are acceptable.

4.3.5.1 Information Needed

The State should submit its procedures that address peer review, supervisory review, and any other method to assure the quality of licensing actions.

4.3.5.2 Evaluation Criteria

The State should have written licensing procedures that provide a standard process for reviewing the quality of licensing actions. The procedures should reflect the organization of the State program and any special requirements of State law. [1, 13]

4.3.5.3 References

a. Criteria Policy Statement, criteria 1 and 13

b. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator 4 – Technical Quality of Licensing Actions

c. State Agreement Procedure SA-104, *Reviewing the Common Performance Indicator, Technical Quality of Licensing Actions*

4.3.6 Administrative Licensing Procedures

The routine operation of the program requires administrative processing of licenses beyond the technical evaluations. Written procedures describing the administrative processing steps are useful to assure that all procedural requirements are completed. They may become critical if there is an unexpected turnover of senior staff.

On the effective date of the Agreement, the NRC transfers to the State those NRC licenses that the State will regulate under the authority of its Agreement. The NRC and the State must make appropriate arrangements so that there will be no interference with or interruption of licensed activities or the processing of license applications because of the transfer. Licensees must be able to continue their licensed activities without interruption upon transfer of the license on the effective date of the Agreement. The licensee will continue under the State regulatory framework at this point. The NRC is committed to transferring complete license files that the State can use in issuing its own license to licensees. The State can recognize the transferred NRC licenses, including licenses under timely renewal, as State licenses. Those licenses then continue in effect until they are replaced by licenses issued by the State. The State may propose an alternative to transferring licenses, if desired.

4.3.6.1 Information Needed

The State should submit its administrative procedures for licensing. The procedures should address the following:

a. Receipt of licensing actions;

b. Timely renewal notifications;

c. Assignment of licensing actions to technical evaluators;

d. License document preparation;

e. Tracking of action progress;

f. The signing of completed licenses;

g. Transmittal of the signed license to the licensee; and

h. Maintenance of license files.

The State should submit procedures for ensuring the continued validity of licenses affected by the Agreement. The State should have procedures to receive, store, and regulate the licenses as State licenses. The transfer should produce the least interference with licensed activities or the processing of license applications, as is practical.

4.3.6.2 Evaluation Criteria

The State should have program specific written procedures to guide licensing program staff. The procedures should reflect the program organization and any special requirements of State law (i.e., who can sign licenses). Since these procedures do not require a thorough review, the team may review a selected sampling of the procedures instead. [1, 13]

The State must provide a statement as to how it will handle the transferred licenses from the NRC. Often, a State will have statutory authority to accept the NRC licenses as State licenses, with all legal authority under the State law, until the State converts the NRC license to a State license. [25]

4.3.6.3 References

a. Criteria Policy Statement, criteria 1, 13, and 25

b. Inspection Manual Chapter 2882, *Transfer of NRC License Files to Agreement State(s)*

4.4 Inspection Program Elements

A State may adopt technical inspection procedures modeled on Inspection Manual Chapter 2800 or the procedures of an existing Agreement State.

Nontechnical administrative procedures, such as a procedure for assigning inspections to inspectors, are usually not key contributors to program performance. The review team usually reviews samples of these procedures. The team only needs to conclude that the State has written administrative procedures for inspections, and that they contain no obvious major defects.

4.4.1 Procedures for Inspecting Facilities Where Radioactive Material is Stored or Used

The technical inspection procedures should address the following areas:

a. Scheduling of inspections and the different kinds of inspections (routine, reactive, reciprocity, security, etc.);

b. Inspection frequencies, including information on conducting pre-licensing inspections;

c. The format and guidance for inspection reports;

d. Performance of inspections, including performance-based criteria;

e. Notification to licensees of results and whether or not the licensee is in compliance; and

f. State field instrumentation and laboratory analysis, including calibration and quality assurance.

The technical procedures should not address administrative matters, such as inspection fees.

4.4.1.1 Information Needed

The State should submit inspection procedures, including inspection report formats, checklists, and status reports. Procedures submitted should cover all NRC license program codes of licensees that will transfer to the State. The State should also submit its priority schedule for inspections by program code and its schedule for reciprocity inspections.

4.4.1.2 Evaluation Criteria

The State should perform inspections following written procedures that address inspection activities appropriate to the category of licensee being inspected. [1, 16, 18, 36]

The State should correlate inspection frequency to the amount and kind of material and type of operation licensed. Routine, initial, and reciprocity inspections should not be less frequent than NRC inspections as listed in Inspection Manual Chapter 2800. [16]

Inspection procedures should provide for information exchange between the inspection staff and the licensing staff, as appropriate. [1]

The procedures should provide guidance to the State program staff on the use of both field and laboratory instrumentation. This instrumentation is used to evaluate the licensee's control of materials and to verify the licensee's measurements. The State should submit a list of its instrumentation for review. The procedures should include procedures on instrument calibration. [16, 36]

If the Agreement covers Section 11(e).2 byproduct material, the procedures should also: [36]

a. Provide 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.

b. Provide analysis and data reduction from laboratory analytical facilities within 30 days of submittal. State acceptability of quality assurance programs should be established for the analytical laboratories. The State should make arrangements to participate in the Environmental Protection Agency quality assurance program for laboratory performance.

c. Provide arrangements for a large number of samples in a variety of sample media resulting from a major accident to be analyzed in a time frame that will allow timely decisions to be made regarding public health and safety.

The State should notify licensees of the results of inspections in a short time period, typically within 30 days. [18]

The team may use the NRC inspection procedures as guidance to evaluate the State inspection procedures. The State procedures should provide a similar level of detail as the equivalent NRC procedure. However, the procedures are not required to be the same as the NRC's procedures as long as they address all significant technical issues. The NRC does not require States to adopt the NRC procedures.

4.4.1.3 <u>References</u>

a. Criteria Policy Statement, criteria 1, 16, 18, and 36

b. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator – Status of Materials Inspections

c. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator – Technical Quality of Inspections

d. State Agreement Procedure SA-101, *Reviewing the Common Performance Indicator, Status of Materials Inspection Program*;

e. State Agreement Procedure SA-102, *Reviewing the Common Performance Indicator, Technical Quality of Inspections*

f. NRC Inspection Manual Chapters (IMC)

   1. IMC1220, *Processing of Form 241 and Inspection of Agreement State Licensees Operating under 10 CFR 150.20*
   2. IMC 2800, *Materials Inspection Program*
   3. IMC 2801, *Uranium Mill 11e.(2) Byproduct Material Disposal Site and Facility Inspection Program*

g. NRC inspection procedures – numerous inspection procedures in the "IP 8XXXX" series related to different byproduct material uses, transportation, uranium mill site decommissioning, etc. These inspection procedures can be found on the NRC public website, https://www.nrc.gov/reading-rm/doc-collections/insp-manual/index.html. The number of documents is too extensive to list in this

document.

4.4.2 Procedures for Assuring the Technical Quality of Inspections and Inspection Reports

Secondary reviews of inspection reports are beneficial for quality assurance purposes and can be used to evaluate the accuracy and integrity of the inspection process. Peer and supervisory review are commonly used. Larger programs may use a committee to conduct reviews of selected inspections recently completed. Other forms of effective quality assurance programs are acceptable.

4.4.2.1 Information Needed

The State should submit its procedures addressing peer review, supervisory review, and any other method to ensure the quality of inspections and inspection reports.

4.4.2.2 Evaluation Criteria

The State should have written procedures to guide program staff. The NRC does not have a preference for any particular format or method. The procedures should reflect the organization of the State program and any special requirements of State law. [1, 16]

4.4.2.3 References

a. Criteria Policy Statement, criteria 1 and 16

b. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator 3 – Technical Quality of Inspections

c. State Agreement Procedure SA-102, *Reviewing the Common Performance Indicator, Technical Quality of Inspections*

d. NRC Inspection Manual Chapter 2800, *Materials Inspection Program*

e. Inspection Manual Chapter 2801, *Uranium Mill 11e.(2) Byproduct Material Disposal Site and Facility Inspection Program*

4.4.3 Administrative Procedures for Inspections

The routine operation of the program requires administrative processing of an inspection report after the inspector has written it. Written procedures describing the administrative processing steps are useful to ensure that all procedural requirements are completed. They may become critical if there is an unexpected turnover of senior staff.

4.4.3.1 Information Needed

The State should submit its inspection program administrative procedures.

4.4.3.2 Evaluation Criteria

The State should have program specific written procedures. The procedures should reflect the organization of the State program and any special requirements of State

statute (i.e., public disclosure or confidentiality). [1]

Because these procedures do not require a thorough review, the team may review a selected sampling of the procedures instead.

4.4.3.3 References

a. Criteria Policy Statement, criterion 1

b. NRC Inspection Manual Chapter 2800, *Materials Inspection Program*

c. Inspection Manual Chapter 2801, *Uranium Mill 11e.(2) Byproduct Material Disposal Site and Facility Inspection Program*

4.5 Enforcement Program Elements

A State may adopt enforcement procedures modeled on the NRC procedures, or those used by another Agreement State. The routine procedures include a notice of the violation to the licensee. Escalated enforcement procedures supplement routine enforcement procedures and are for serious or repeated violations.

4.5.1 Routine Enforcement Procedures

Routine enforcement procedures describe the actions the program takes in response to a violation of a regulatory requirement that is not serious in nature and is not a repeated violation.

4.5.1.1 Information Needed

The State should submit its procedures for routine enforcement.

4.5.1.2 Evaluation Criteria

The State should have procedures for ensuring the fair and impartial administration of regulatory law. They should scale the actions to the seriousness of the violation. [23]

The procedures should establish standard methods of communicating sanctions to the licensee. The State should give written notice using standardized wording and format. Legal counsel should review the wording and format. [18, 19]

The procedures should include a means for tracking the completion of enforcement actions.

4.5.1.3 References

a. Criteria Policy Statement, criteria 18, 19, and 23

b. *NRC Enforcement Policy* [available on the NRC public website at www.nrc.gov]

c. NRC Inspection Manual Chapter 2800, *Materials Inspection Program*

d. Inspection Manual Chapter 2801, *Uranium Mill 11e.(2) Byproduct Material Disposal Site and Facility Inspection Program*

4.5.2 Escalated Enforcement Procedures

For serious or repeated violations of regulatory requirements, the program should use escalated enforcement. Escalated enforcement actions usually supplement the routine actions.

Escalated enforcement actions may include:

a. Administrative or civil monetary penalties;

b. Modification, suspension, or revocation of the license; and

c. Referral for criminal prosecution.

4.5.2.1 Information Needed

The State should submit its procedures for escalating enforcement actions.

4.5.2.2 Evaluation Criteria

The State should scale the sanctions in escalated enforcement cases to the seriousness of the violation. The sanctions should be more severe than routine enforcement. [19, 23]

The procedures should address notifying the licensee of proposed escalated enforcement actions. The notice should be in writing, using standard wording and format when practical. [18, 19]

The enforcement program element manager, or higher, should sign notices of escalated enforcement. [23]

Escalated enforcement actions should be coordinated with legal counsel. [19]

4.5.2.3 References

a. Criteria Policy Statement, criteria 18, 19, and 23

b. *NRC Enforcement Policy* [available on the NRC public website at www.nrc.gov]

c. NRC Inspection Manual Chapter 2800, *Materials Inspection Program*

d. IMC 2801, *Uranium Mill 11e.(2) Byproduct Material Disposal Site and Facility Inspection Program*

4.6 Technical Staffing and Training Program Elements

The State should adopt technical staffing standards similar to the NRC's standards. The State may adopt training and qualification procedures modeled on the NRC's procedures in Inspection Manual Chapter 1248, *Formal Qualifications Program for Federal and State*

Material and Environmental Management Programs.

To evaluate complex cases, the program staff may need to hire consultants or use staff from other State agencies with needed expertise.

4.6.1 Technical Staff Organization

The State should conduct an analysis of the expected workload and establish an appropriate staffing plan. The analysis should consider the number, distribution, and sizes of the licensees that will transfer under the Agreement. Sample forms for a staffing analysis are in Appendix B of the Handbook.

The staffing analysis should also consider if the State will perform radiation safety reviews of sealed sources and devices containing radioactive material and register the sealed sources or devices for distribution; license a LLRW commercial land disposal site; license uranium or thorium recovery facilities subject to the requirements of UMTRCA; license major manufacturers, universities with major research programs, or other large scale materials users; or will need to perform increased controls inspections on affected licensees.

4.6.1.1 Information Needed

The State should submit its program staffing plan, including organization charts. The staffing plan should show the number of staff members assigned to specific responsibilities, such as license review and inspection and for each major category of licensee. It should estimate the workload for the licensees that will be transferred to the State and the other duties of the program.

4.6.1.2 Evaluation Criteria

The State is not required to use the sample forms in Appendix B of the Handbook. If used, the State should modify the forms as needed to reflect the mix of license programs that the State will regulate.

The State must staff the program with enough qualified personnel. The staff must consist of at least two technical staff. [20]

The NRC does not have a specific requirement for the number of staff required, but the experience of existing Agreement States should be considered. Depending on training and experience, Agreement State programs typically employ 1 to 1.5 technical staff members per 100 active licenses. Waste disposal sites or uranium mills require additional staff. The distribution of staff should be based on workload estimates that are consistent with the NRC and other Agreement State programs experience. [20, 34]

The State workload estimate should be based on the State's organization, policies, practices, and procedures. The State should not create a staffing plan based solely on the NRC staffing plan. [20]

4.6.1.3 References

a. Criteria Policy Statement, criteria 20 and 34

b. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator – Technical Staffing and Training

c. State Agreement Procedure SA-103, *Reviewing the Common Performance Indicator, Technical Staffing and Training*

4.6.2 Formal Qualification Plan

The ability to conduct an effective material program depends on having enough trained and experienced staff members. The state should develop a formal qualification plan to address training of staff. In addition, a key to this process is having strategies in place to address staff retirements, promotions, and departures.

4.6.2.1 Information Needed

The State should submit its position descriptions and its qualification plan for formal qualification of technical staff members.

4.6.2.2 Evaluation Criteria

Each technical staff position should require a bachelor's degree in the physical or life sciences or in engineering. An equivalent combination of education and experience may substitute for the degree. [2, 34]

The program should have a written qualification plan. It should address job specific training and experience. The plan should specify the qualification procedures, including times for completing requirements. It should address the credentialing of individuals qualified to work independently. The plan should provide for interim qualification and certification by the State Program Director or designee. Inspection Manual Chapter 1248, *Formal Qualifications Program for Federal and State Material and Environmental Management Programs,* may be used as general guidance. [20, 34]

4.6.2.3 References

a. Criteria Policy Statement, criteria 2, 20, and 34

b. NRC Management Directive 5.6*, IMPEP*, Common Performance Indicator – Technical Staffing and Training

c. NRC Inspection Manual Chapter 1248, *Formal Qualification Programs in the Nuclear Material Safety and Safeguards Program Area*

d. State Agreement Procedure SA-103, *Reviewing the Common Performance Indicator Technical Staffing and Training*

4.6.3 Qualifications of Current Technical Staff

The program staff qualifications should cover both routine functions and emergency cases. The distribution of staff qualifications and the distribution of licensees transferred should match. For example, there should be enough inspectors qualified to inspect industrial radiography licensees that a backlog of industrial radiography inspections will not develop.

4.6.3.1 Information Needed

The State should submit the resume of each current member of the technical staff. The resume should, at a minimum, show the educational level, experience, and any specialized training.

For staff members admitted into training courses not yet completed, submit the course name or description and scheduled dates. For each current staff member, identify the individual's qualifications (including interim qualifications) under the State's written qualification plan.

4.6.3.2 Evaluation Criteria

Except for some junior positions, all staff members should meet the program's own qualification requirements. [20, 34]

The review team may consider the State's experience working with NRC inspectors and license reviewers. It may also consider experience regulating non-Agreement materials and machine-produced sources of radiation. [20, 34]

4.6.3.3 References

a. Criteria Policy Statement, criteria 20 and 34

b. NRC Management Directive 5.6, *IMPEP*, Common Performance Indicator – Technical Staffing and Training

c. NRC Inspection Manual Chapter 1248, *Formal Qualifications Program for Federal and State Material and Environmental Management Programs*

4.7 Event and Allegation Response Program Elements

A State may adopt event and allegation response procedures modeled on the NRC procedures, or those used by another Agreement State. The procedures for reporting events to the NRC should be modeled on State Agreement Procedure SA-300, *Reporting Material Events*. State Agreement Procedure SA-400, *Management of Allegations*, provides information on the processes for management of allegations.

4.7.1 Procedures for Responding to Events and Allegations

The Agreement materials program must have written procedures for responding to materials events within the State. The response capability may be part of another

organization, such as a response organization for fixed nuclear facilities. However, response to materials events is still the responsibility of the materials program under the Agreement. The NRC has established the National Materials Event Database (NMED) for materials events, including incidents, accidents, and medical events. The Agreement materials program should have written procedures for reporting events to the NRC, its NMED contractor, and to the NRC Operations Center for those events requiring immediate or 24-hour notifications.

The program should have written procedures for responding to allegations of violations of regulatory requirements. The program does not need to have investigatory capability within the program or its parent agency if the allegations are deliberate or criminal in nature. However, the program's procedures should include steps for contacting appropriate authorities when needed.

4.7.1.1 Information Needed

The State should submit its procedures for responding to events and allegations.

4.7.1.2 Evaluation Criteria

Event response procedures should be consistent with, but need not be identical to, the NRC procedures. The procedures should address the following: [1, 11]

a. Immediate response and actions to mitigate an event;

b. Follow-up inspections and enforcement actions;

c. Notifications to licensing staff;

d. Reports to the incident file; and

e. Notifications to other affected licensees of generic problems.

Allegation procedures should address response, follow-up, and closeout. They should also provide for protection of the identity of a person making an allegation when requested. The procedures should also provide for the protection of other sensitive information. [1, 11]

4.7.1.3 References

a. Criteria Policy Statement, criteria 1 and 11

b. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, Common Performance Indicator – Technical Quality of Incident and Allegation Activities

c. NRC Management Directive 8.8, *Management of Allegations*

d. NRC Inspection Manual Chapter 1301, *Response to Radioactive Material Incidents That Do Not Require Activation of the NRC Incident Response Plan*

e. NRC Inspection Manual Chapter 1302, *Follow-up Actions and Action Levels for Radiation Exposures Associated with Materials Incidents Involving Members of the Public*

f. NRC Inspection Manual Chapter 1303, *Requesting Emergency Acceptance of Radioactive Material by the U.S. Department of Energy (DOE*

g. NRC Inspection Manual Chapter 1330, *Response to Transportation Accidents Involving Radioactive Materials*

h. State Agreement Procedure SA-105, *Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities*

i. State Agreement Procedure SA-300, *Reporting Material Events*

j. State Agreement Procedure SA-400, *Management of Allegations*

4.7.2 Procedures for Identifying Significant Events and Submitting for Entry into the Nuclear Material Events Database

The States must report all events to the NRC that NRC regulations (or equivalent State regulations) require the licensees to report. The States must report events directly to the NRC, its NMED contractor, or to the NRC Operations Center for events that require immediate notification or notification within 24 hours.

4.7.2.1 Information Needed

The State should submit its procedures for generating event reports. It should also submit its procedures for reporting events to the NRC. above.

4.7.2.2 Evaluation Criteria

The State procedures should assign responsibility for the completion of the reports and for ensuring the quality of the reports. The procedures should also include specific times for completion of the reports and submitting them to the NRC. The procedures should provide guidance for identifying abnormal occurrences. [1, 11]

The State procedures should contain criteria for identifying reportable events. The procedures should include guidance for reporting events (notification, follow-up, and closeouts) to the NRC or its contractor for inclusion into the NMED database, as well as procedures for reporting events to the NRC Operations Center. The State procedures should be consistent with the State Agreement Procedure SA-300 Handbook, *Nuclear Material Event Reporting in the Agreement States*. [1, 11]

4.7.2.3 References

a. Criteria Policy Statement, criteria 1 and 11

b. State Agreement Procedure SA-300, *Reporting Materials Events*

Acronym List

CFR	Code of Federal Regulations
CRCPD	Conference of Radiation Control Program Directors, Inc.
DNMS	Division of Nuclear Materials Safety (NRC regional organization units)
FRN	*Federal Register* notice
FTE	Full Time Equivalent of personnel effort
IMC	NRC Inspection Manual Chapter
IP	NRC Inspection Procedure
LLRW	Low-Level Radioactive Waste
MD	NRC Management Directive
MSST	Division of Materials Safety, Security, State, and Tribal Programs
MOU	Memorandum of Understanding
NMED	Nuclear Materials Event Database
NMSS	NRC Office of Nuclear Materials Safety and Safeguards
NARM	Naturally occurring or accelerator-produced byproduct materials
NRC	United States Nuclear Regulatory Commission
OGC	NRC Office of the General Counsel
RSAO	Regional State Agreements Officer (NRC staff)
RSLO	Regional State Liaison Officer (NRC Staff)
SALPB	State Agreement and Liaison Programs Branch
SA	State Procedure
SSR	*Suggested State Regulations*, published by the CRCPD
TL	Tribal Liaison
TR	Tribal Procedure
UMTRCA	Uranium Mill Tailings Radiation Control Act of 1978, as amended

Definitions

As used in this document:

AEA - means the Atomic Energy Act of 1954, as amended.

Agreement Materials – means the materials that are regulated under the authority of the Agreement.

Agreement materials program – a term used to distinguish the program under which the materials regulated under the authority of the Agreement from that of the other radiation control activities of the State. In this procedure, the term "Agreement materials program" includes all State organizational units with regulatory responsibility over the materials specified in the Agreement.

Commission – means the collegial body of U.S. Nuclear Regulatory Commissioners and is used when relating to actions or decisions made by the body of Commissioners. Note that 10 CFR Parts 20 and 30 define "Commission" as the U.S. Nuclear Regulatory Commission and its duly authorized representatives. Note that the use of the term "Commission" is used consistently in this document as it is used in the Atomic Energy Act of 1954, as amended.

Civil penalty – means a monetary fine imposed and collected by the materials program, or by apparent agency. This is also known as an "administrative fine."

Generic legally binding requirement – means a legally enforceable statement, limited in the extent of its application, that implements or interprets law or describes procedural requirements, and that is adopted in accordance with the administrative procedures of the promulgating jurisdiction. Examples are license conditions or orders. Generic legally binding requirements differ from regulations in that they are directed to a specifically identified constituency. To be considered generic, however, the requirements should be made effective upon all members of any class of licensees or other persons upon which a regulation would have effect.

License – authorization to possess and use agreement material.

License application – means the formal request for a new license, a license renewal, or a license amendment, as appropriate, made in accordance with the administrative licensing procedures of the jurisdiction.

Materials – generally means byproduct, source, and special nuclear materials, as defined in the AEA. However, if appropriate to the context, it may include naturally occurring or accelerator-produced radioactive materials, if such radioactive materials are regulated by the same program designated to regulate byproduct, source, and special nuclear materials under the Agreement.

Memorandum of Understanding – means any formal statement of cooperation between agencies. The term "Letters of Agreement" is equivalent.

Nuclear Materials Event Database – NMED, maintained by NRC, is a historical collection of incidents and events that have occurred throughout the United States involving the use of radioactive material covered under the Atomic Energy Act of 1954, as amended. This excludes events occurring at nuclear power plants.

Procedure – means a written statement delineating the steps in an activity and may include "policy" statements.

Program – means the organization within a jurisdiction that is specifically dedicated to the regulation of materials. It may be a separate organizational unit, or a subunit of an organization with wider responsibilities. It may also consist of the sum of the materials program elements distributed over several organizations. The NRC materials program consists primarily of NMSS and the radioactive materials program of each region, but it also includes the support activities provided by other NRC Offices as required.

U.S. Nuclear Regulatory Commission (NRC) – means the Nuclear Regulatory Commission or its duly authorized representatives. The term "NRC" is used when referring to the actions or decisions made by the NRC as an agency. Also, see" Commission" above in reference to the use of "Commission" for consistency with the Atomic Energy Act of 1954, as amended.

Radiation – means ionizing radiation only.

Regulation – means a legally enforceable statement of general applicability that implements or interprets law or describes procedural requirements, and that is adopted in accordance with the administrative procedures of the promulgating jurisdiction. The term "rule" is equivalent as used in this document.

Appendix A

Cross Index table

Program Elements, Information Required from State, Policy Statement Criteria, and References

Section	Program Element	Information from State	Criteria number (See section	References
4.1	**Legal Elements**			
4.1.1	Statutory Authority	Sections of State Law that authorize the program and the Agreement	1, 2, 9b, 12, 13, 14, 17, 19, 21, 23, 24, 25, 27, 28, 29, 30, and 31	Criteria Policy Statement; Suggested State Legislation; Statement of Principles and Policy for the Agreement State program
4.1.2	Program Organization	Detailed narrative description of radiation protection program	1, 24, and 33	Criteria Policy Statement; Program descriptions of existing Agreement States from IMPEP reports; MD 5.9; SA-200
4.1.3	Content of Agreement	Proposed Agreement	27	Criteria Policy Statement; MD 5.8
4.2	**Regulatory Requirements Program Elements**			
4.2.1	Regulations and Legally Binding Requirements	Proposed Regulations and Legally Binding Requirements	1, 2, 3, 4, 5, 6, 7, 8, 9a, 10, 11, 22, and 32	Criteria Policy Statement; MD 5.9; SA-200; SA-201; 10 CFR Parts 19, 20, 30, 31, 32,33, 34, 35,36, 37, 39, 40, 61, 70, and 150; CRCPD SSR's

Section	Program Element	Information from State	Criteria number (See section	References
4.3	**Licensing Program Elements**			
4.3.1	Materials licensing	Licensing Program description and procedures; licensing guides	1, 7, 8, 9a, 13, 14, 15, 20, and 23	Criteria Policy Statement; MD 5.6; SA-104; NUREG-1556 series; NUREG-1757; NUREG-1575 (MARSSIM)
4.3.2	Sealed Source & Device Safety Evaluations	Sealed Source & Device Program description and procedures	13 and 23	Criteria Policy Statement; NUREG-1556, Volume 3; MD 5.6
4.3.3	Low-level Waste Site Licensing	LLW Program description and procedures	9b and 13	Criteria Policy Statement; NUREG-1199; NUREG-1200; NUREG-1300; NUREG-1274; MD 5.6; SA-109
4.3.4	Uranium or Thorium Mill Licensing	11e.(2) Program description and procedures	29, 30, 31, 32, 33, 34, and 35	Criteria Policy Statement; Uranium Recovery Regulations, Guidance, and Communications; MD 5.6; SA-110
4.3.5	Licensing Quality Assurance	Procedures for review of licensing quality	1 and 13	Criteria Policy Statement; MD 5.6; SA-104
4.3.6	Licensing Administrative Procedures	Procedures for processing licensing actions	1, 13, and 25	Criteria Policy Statement
4.4	**Inspection Program**			
4.4.1	Inspection Procedures	Inspection Program description, inspection procedures and guides, report formats, inspection frequency	1, 16, 18, and 36	Criteria Policy Statement; MD 5.6; SA-101; SA-102; IMC 1220; IMC 2800; IMC 2801; NRC inspection procedures in the “IP 8XXXX” series.

Section	Program Element	Information from State	Criteria number (See section	References
4.4.2	Inspections Quality Assurance	Procedures for review of inspection quality	1 and 16	Criteria Policy Statement; MD 5.6 and SA-102; IMC 2800; IMC 2801
4.4.3	Inspection Administrative Procedures	Procedures for processing & filing inspection reports	1	Criteria Policy Statement; IMC 2800; IMC 2801
4.5	**Enforcement Program**			
4.5.1	Routine Enforcement Procedures	Enforcement program description and procedures for routine enforcement actions, notice of violation letters	18, 19, and 23	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801
4.5.2	Escalated Enforcement Procedures	Procedures for escalated enforcement actions, procedures for legal assistance	18, 19, and 23	Criteria Policy Statement; NRC Enforcement Policy; IMC 2800; IMC 2801
4.6	**Technical staff**			
4.6.1	Technical staff Organization	Staffing plan	20 and 34	Criteria Policy Statement; MD 5.6; SA-103
4.6.2	Formal Qualification Plan	Formal qualification plan for technical staff	2, 20 and 34	Criteria Policy Statement; MD 5.6; IMC1248; NRC/OAS Training Working Group, “Recommendations for Agreement State Training Programs”
4.6.3	Current Technical staff Qualifications	Resumes, certification of qualification, or CV's of current technical staff	20 and 34	Criteria Policy Statement; MD 5.6; IMC1248

Section	Program Element	Information from State	Criteria number (See section	References
4.7	**Event & Allegation**			
4.7.1	Event & Allegation Response Procedures	Program description and procedures for responding to incidents and allegations	1 and 11	Criteria Policy Statement; MD 5.6; MD 8.8; IMC 1301; IMC 1302; IMC 1303; IMC 1330; SA-105; SA 300; SA-400
4.7.2	Event Reporting Procedures	State NMED reporting procedures	1 and 11	Criteria Policy Statement; SA-300

Appendix B

Staffing Analysis Forms

Staff Need and Resource Analysis

Instructions

Address all major license program areas. Note that the following is representative and may not be a complete list of technical staff activities for any particular program.

A. Staff Needs Analysis

1. For each License Category, enter the number of **licenses** (not **licensees)** your program will have (see the sample "STAFF NEEDS ANALYSIS" form, attached).

2. Estimate the average number of licensing actions (new, renewal, amendments, and terminations) you expect to receive per year per license in that category. For assistance, you should discuss the estimates with the NRC Region and existing Agreement States about their experience.

3. Estimate the number of staff days you need to process an average action.

4. Multiply the estimates in steps 2 and 3 to derive an estimate of the number of staff days you will need to process the expected licensing actions for that category.

5. Repeat steps 2, 3 and 4 for inspections. Include reactive inspections, and consider preparation, travel, on-site, and report writing time.

6. Conduct a similar analysis for the other major areas of the Agreement program. Consider regulation development; decommissioning (including complex decommissioning sites); response to incidents and allegations; contingencies and unanticipated work; and supervisory functions (including inspector accompaniments).

B. Resource Analysis

1. Enter staff member ID in blank boxes on top row (see the sample "STAFF RESOURCE ANALYSIS" form, attached).

2. In the Licensing and Inspection Program Areas: For each License Category the individual is qualified to inspect, enter the number of days the individual will be available for inspections of those licensees.

3. For each License Category the individual is qualified to review licenses, enter the number of days the individual will be available for reviewing actions of those licensees.

4. For each License Category, add the days available over all inspectors and enter this number on the “STAFF BALANCE ANALYSIS” form. Add the days available over all

license reviewers and enter this number on the STAFF BALANCE ANALYSIS form.

5. Conduct a similar analysis for the other major areas of the Agreement program.

C. Balance Analysis

1. In the Licensing and Inspection Program Areas: For each License Category, compare the estimated number of days needed and days available for licensing and inspections. The number of days available **must be at least equal** to the number of days needed.

2 In the other program areas of the Agreement: For each program area, compare the estimated number of days needed and days available. The number of days available **must be at least equal** to the number of days needed.

STAFF NEEDS ANALYSIS

License Category	Number of Licenses	Licensing actions/yr	Staff days per action	Licensing staff days	Inspections per year	Staff days per inspection	Inspection staff days
Academic							
Broad Scope Academic							
Nuclear Med - Uptake, etc							
Nuclear Med Imaging and diagnostic							
Nuclear Med							
Bone Mineral							
Brachytherapy							
Teletherapy							
Medical – Broad Scope							
Nuclear Pharmacy							
Fixed Gauge							
Portable Gauge							

License Category	Number of Licenses	Licensing actions/yr	Staff days per action	Licensing staff days	Inspections per year	Staff days per inspection	Inspection staff days
Industrial - other Includes irradiators							
Broad Scope Industrial							
Industrial Radiography							
Well Logging							
LLRW broker							
LLRW site							
U recovery							
SS&D							

STAFF RESOURCE ANALYSIS

Staff Member											Total	
License Category	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic
Academic												
Broad Scope Academic												
Nuclear Med - Uptake, Etc												
Nuclear Med – Imaging and Diagnostic												
Nuclear Med - Therapy												
Bone Mineral												
Brachytherapy												
Teletherapy												
Medical - Broad Scope												

Staff Member											Total	
License Category	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic	Insp	Lic
Nuclear Pharmacy												
Fixed Gauge												
Portable Gauge												
Industrial – Other Includes Irradiators												
Broad Scope Industrial												
Industrial Radiography												
Well Logging												
LLRW Broker												
LLRW Site												
U Recovery												
SS&D												

STAFF BALANCE ANALYSIS

	Inspection staff days		Licensing staff days	
License Category	Needed	Available	Needed	Available
Academic				
Broad Scope Academic				
Nuclear Med - Uptake, Dilution, and Excretion				
Nuclear Med – Imaging and Diagnostic				
Nuclear Med - Therapy				
Bone Mineral Analysis				
Brachytherapy				
Teletherapy				
Medical - Broad Scope				
Nuclear Pharmacy				
Fixed Gauge				
Portable Gauge				
Industrial – other; includes irradiators				
Broad Scope Industrial				
Industrial Radiography				
Well Logging				
LLRW broker				
LLRW site				
U recovery				
SS&D				

APPENDIX C

Schedule for Processing a Request for an Agreement

NOTE: This schedule requires that both the State requesting the agreement and the NRC follow this schedule to ensure that the Agreement is completed within the timeframe requested by the State upon receipt of the formal certification from the Governor. If either the State or the NRC is not able to follow this schedule, it is unlikely that the timeframe will be met. This means that the effective date of the Agreement may not be on the planned date. If, for any reason, the State or the NRC cannot meet the established goals, the schedule will be adjusted.

The goal is to process a request for an Agreement in about 1 year from receipt of the formal request and letter of certification from the Governor. There are many factors involved to meet this goal. The schedule below does not include the time the proposed Agreement and final Agreement is with the Commission for review. There are many stages in these processes where the actual time will be less than stated. The NRC staff and the State should expedite each stage to help meet the goal for the effective date of the Agreement.

Event	Event Time	Total Elapsed Time	Comments
PART I **Review of the Request for an Agreement**			
Notification that a Draft Request will be submitted	2 months prior to submission	NA	
Review team established	4 weeks to establish the NRC staff review team.	NA	Between notification of a Draft Request and receipt of the Draft Request
Receipt of draft request	0	NA	
Team concludes completeness review	8 weeks	NA	Account for administrative process and Division level management review
Completeness letter mailed, including any comments	1 week	NA	
Total time period of Part I		9 weeks from receipt of draft request	

Event	Event Time	Total Elapsed Time	Comments
PART II **Formal Request**			From this stage, the process for an Agreement takes about 1 year – 52-54
Receipt of formal request	8 weeks	8 weeks	The State should try to submit the formal request within 8 weeks of receiving NRC's completeness letter, addressing any comments NRC had on the draft request
Team review of formal request finished	4 weeks	12 weeks	Based on no unresolved issues
Project manager completes Commission Paper, including draft staff assessment and *Federal Register* notice	4 weeks	16 weeks	Account for administrative process and Division level management review
NRC Offices concur on Commission paper	3 weeks	19 weeks	NRC offices are given 15 working days to review and concur
NMSS Office Review	2 weeks	21 weeks	
EDO sends Commission paper to the Commission	2 weeks	23 weeks	At this point, the schedule is in control of the Commission
Total time period of Part II		23 weeks	This is from the receipt of the formal request for an Agreement
Commission approves publication	Up to 2 months		Staff cannot ensure the date by which the Commission will vote on a paper. Staff should include a discussion in the paper of any critical dates that need to be met in order to meet the goal for the effective date of the Agreement
PART III **Publication of Federal Register Notice, Public Comment period, and analysis of public comments**			
First publication in the Federal Register (noticed each week for four consecutive weeks)	1	NA	This is required by Section 274.e.(1) of the Atomic Energy Act
Public comment period ends	Week 4	4 weeks	

Event	Event Time	Total Elapsed Time	Comments
Review Team analyzes comments, completes the final staff assessment	4 weeks	8 weeks	
Commission paper			
Total time period		8 weeks	
PART IV **Final processing and Commission approval**			
NRC offices concur on final assessment and Commission paper	3 weeks	11 weeks	NRC offices are given 15 working days to review and concur
NMSS Office Review	2 weeks	13 weeks	
EDO sends the Commission paper to the Commission	2 weeks	15 weeks	
Total time period of Part IV		15 weeks	
Total time period of Parts II, III, and IV, not including time with the Commission		50 weeks	
Commission approves the Agreement	Up to 2 months		Staff cannot ensure the date by which the Commission will vote on a paper. Staff should include a discussion in the paper of any critical dates that need to be met in order to meet the goal for the effective date of the Agreement
Notice Agreement in the *Federal Register* within 30 days of the Chairman and Governor signing the Agreement	30 days		This is required by Section 274.e.(2) of the Atomic Energy Act

Appendix D

Sample Letters and Documents

Below is a list of the type of documents involved with a request for an Agreement, NRC's review of the request, and the final documents. The examples are for Pennsylvania, Virginia, and New Jersey. A brief description of the document is provided as well as the ADAMS accession numbers of recent examples. A cross reference to the section of the Procedure or the Handbook is included as well for further discussion.

A. Letter of Intent [SA-700 Procedure, Section V.A. and Handbook, Section 3.3]

The Governor of a State sends a Letter of Intent to the Chairman of the Commission, indicating the State's interest in entering into an agreement with the NRC. In this letter, the Governor states what categories of material over which the State wants to have regulatory authority.

1. Virginia – ML060040246
2. New Jersey – ML061460176

B. Chairman's Acknowledgment of Letter of Intent [Handbook, Section 3.3.2.1]

The Chairman of the NRC writes a letter to the Governor of the State acknowledging receipt of the Governor's Letter of Intent.

1. Virginia – ML060230433
2. New Jersey – ML061570433

C. Completeness Letter – after review of draft application [SA-700 Procedure, Section V.D. and Handbook, Section 3.4.3.1]

The staff, signed at the division level, sends a letter to the State regarding the completeness of the application. If there are any questions/deficiencies that need to be resolved in the draft application, this is the method to communicate these to the State.

1. Pennsylvania – ML070240055

D. Governor's Letter of Certification (formally requesting Agreement) [Handbook, Section 3.5]

The Governor sends a letter to the Chairman of the Commission formally requesting an Agreement and submitting the formal request and supporting information for an Agreement. In this letter, the Governor certifies that the State has a program that is

adequate and compatible to regulate the categories of materials for which it is requesting under the Agreement.

1. Pennsylvania – ML063330295
2. Virginia – ML081720184
3. New Jersey – ML090820227

E. Chairman's letter replying to the Governor's Letter of Certification [SA-700 Procedure, Section V.D. and Handbook, Section 3.5]

The Chairman of the NRC writes a letter to the Governor of the State acknowledging receipt of the Governor's Letter of Certification, explaining the NRC's review process, and assuring that the team will work expeditiously to get the review completed in a timely manner.

1. Pennsylvania – ML063400559
2. Virginia – ML081750456
3. New Jersey – ML090420437

F. NRC Staff Assessment – draft Staff Assessment of Proposed Agreement [SA-700 Procedure Section V.F. and Handbook, Section 3.5.2.3]

The staff prepares a draft Staff Assessment based on the Criteria Policy Statement. This draft Staff Assessment documents the review of the State's request in determining that the State's program is adequate and compatible

1. Pennsylvania – ML070890378
2. Virginia – ML083180102
3. New Jersey – ML091400097

G. Commission Paper to Publish Proposed Agreement for Public Comment [SA-700 Procedure, Section V.F. and Handbook, Section 3.5.4]

Staff prepares a paper for the Commission discussing its review of the State's request to enter into an Agreement. The paper includes the draft Staff Assessment, *Federal Register* notice, background information, etc.

1. Pennsylvania – ML070890303, SECY-07-0083
2. Virginia – ML082520029, SECY-08-0154
3. New Jersey – ML090820038, SECY-09-0065

H. *Federal Register* notice of Proposed Agreement [SA-700 Procedure, Section V.F and Handbook, Section 3.5.4]

A *Federal Register* notice is published for four consecutive weeks as directed in Section 274e. of the Atomic Energy Act, as amended.

1. Pennsylvania – ML070890378
2. Virginia – ML083190112
3. New Jersey – ML091400154

I. Press Release for publication of Proposed Agreement (Press release is not in ADAMS) [SA-700 Procedure, Sections V.H. and Handbook, Section 3.5.4]

Staff prepares a press release, working with the Office of Public Affairs. The Press Release announces the opportunity to comment on the proposed Agreement and includes details of what the State would have authority over under the Agreement. The press release also includes information about the staff's review and lists the States that have entered into an Agreement. Two examples for Virginia and New Jersey are attached.

J. Congressional Letters Announcing publication of the proposed Agreement [SA-700 Procedure, Section V.G. and Handbook, Section 3.5.4]

Letters are sent to the U.S. Senators and the U.S. Representatives on the NRC Congressional Oversight Committees, providing these individuals with a pre-publication copy of the *Federal Register* notice. Staff should work with the Office of Congressional Affairs (OCA) to obtain a current list of the NRC Congressional Oversight Committees and the current Chairs and Co-Chairs. Staff will also get the list of U.S. Senators and U.S. Representatives from OCA.

1. Virginia – ML082830147
2. New Jersey – ML090820386

K. Federal Agency letters announcing publication of the proposed Agreement [SA-700 Procedure, Section V.G. and Handbook, Section 3.5.4]

Staff sends a letter to the following Federal agencies informing them of the proposed Agreement:

a) Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration;
b) Assistant Secretary, Congressional and Intergovernmental Affairs, U.S. Department of Energy (DOE);
c) Chairperson of Council on Environmental Quality;
d) Director, Center for Devices and Radiological Health, Food and Drug Administration;
e) Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency; and
f) Assistant Secretary, Office of Legislative Affairs, Department of Homeland Security.

1. Virginia – ML083390455

L. Letter to All States regarding the proposed Agreement (Agreement States, non-agreement states, state liaison officers) [SA-700 Procedure, Section V.H. and Handbook, Section 3.5.4].

Staff sends a State and Tribal Communication letter to All States announcing the opportunity to comment on the proposed Agreement.

1. Pennsylvania – ML071700481 (package with *Federal Register* notice – ML071700474)
2. Virginia – ML083400439 (package with *Federal Register* notice – ML083400455)
3. New Jersey – ML091490212 (no package; *Federal Register* notice is part of the letter)

M. Staff Analysis of Public Comments [SA-700 Procedure, Section I]

Staff prepares an analysis of the public comments received on the proposed Agreement.

1. Virginia – ML090070451
2. New Jersey – ML091950400

N. Final Staff Assessment [SA-700 Procedure, Section I]

Staff finalizes the Staff Assessment of the State's request to enter into an Agreement.

1. Virginia – ML090070454
2. New Jersey – ML091940410

O. Commission paper to approve the final Agreement [SA-700 Procedure, Section I]

Staff prepares a paper for the Commission discussing its final review of the State's request to enter into an Agreement and the public comments that the NRC received. The paper includes the final Staff Assessment, *Federal Register* notice, comment analysis, supplemental information, etc.

1. Pennsylvania – ML073390178 (package with all enclosures and supplemental information), SECY-08-0008
2. Virginia – ML090070428 (package with all enclosures and supplemental information), SECY-09-0022
3. New Jersey – ML091940200 (package with all enclosures and supplemental information), SECY-09-0114

P. *Federal Register* notice of final agreement [SA-700 Procedure, Section I]

A notice of the final agreement is published in the *Federal Register* within 30 days after signature by the Chairman of the Commission and the Governor, as directed in Section 274e. of the Atomic Energy Act, as amended.

1. Virginia – ML090820150
2. New Jersey – ML092710274

Q. Press release for final agreements (Press release is not in ADAMS) [SA-700 Procedure, Section L]

Staff prepares a press release, working with the Office of Public Affairs. The Press Release announces the final Agreement and includes details of what the State will have authority over under the Agreement. The press release also includes information about

the staff's review and lists the States that have entered into an Agreement. Two examples for Virginia and New Jersey are attached.

R. Congressional letters announcing final Agreement [SA-700 Procedure, Section L]

Letters are sent to the U.S. Senators and the U.S. Representatives, as well as to the State delegation, informing these individuals of the approval of the final Agreement. Staff should work with the OCA to obtain a current list of the NRC Congressional Oversight Committees and the current Chairs and Co-Chairs. Staff will also get the list of U.S. Senators and U.S. Representatives from OCA.

1. Pennsylvania – ML080570161
2. New Jersey – ML092450515

S. Chairman's letter to Governor approving the Agreement [SA-700 Procedure, Section I and K]

The Chairman sends a letter to the Governor approving the Agreement.

1. Pennsylvania – ML080580429
2. Virginia – ML090820076
3. New Jersey – ML092450273

T. Letters to Federal agencies announcing final Agreement [SA-700 Procedure, Section L]. Staff sends a letter to the following Federal agencies announcing the final Agreement:

a) Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration;
b) Assistant Secretary, Congressional and Intergovernmental Affairs, U.S. DOE;
c) Chairperson of Council on Environmental Quality;
d) Director, Center for Devices and radiological Health, Food and Drug Administration;
e) Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency; and
f) Assistant Secretary, Office of Legislative Affairs, Department of Homeland Security.

1. Pennsylvania – ML080650223
2. Virginia – ML083390817
3. New Jersey – ML092450572

U. Final Agreement [SA-700 Procedure, Section I]

1. Pennsylvania – ML080580547
2. Virginia – ML092720782
3. New Jersey – ML092450290

V. Letter announcing the Agreement [SA-700 Procedure, Section L] Staff sends a letter to all other States, State Liaison Officers and Federally recognized Tribes announcing the Agreement and the effective date.

1. Pennsylvania – ML080590169
2. Virginia – ML090900429
3. New Jersey – ML092720262

ATTACHMENT

PRESS RELEASE FOR THE PROPOSED AGREEMENT AND THE FINAL AGREEMENT

COMMONWEALTH OF VIRGINIA AND

STATE OF NEW JERSEY

NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION
Office of Public Affairs Telephone: 301/415-8200
Washington, D.C. 20555-0001
Email: opa@nrc.gov
Site: http://www.nrc.gov

No. 08-211 November 18, 2008

NRC CONSIDERING REQUEST BY VIRGINIA TO BECOME AN "AGREEMENT STATE"

The Nuclear Regulatory Commission is considering a request from Virginia Gov. Timothy M. Kaine to assume part of the NRC's regulatory authority over certain nuclear materials in the commonwealth. If the request is accepted, Virginia will become the 36th state to sign such an agreement with the NRC.

Under the proposed agreement, the NRC would transfer to Virginia the responsibility for licensing, rulemaking, inspection and enforcement activities for: (1) radioactive materials produced as byproducts from the production or utilization of special nuclear material (SNM--enriched uranium or plutonium); (2) naturally occurring or accelerator-produced byproduct material (NARM); (3) source material (uranium and thorium); and (4) SNM in quantities not sufficient to support a nuclear chain reaction.

If the proposed agreement is approved, it is estimated that there will be 420 total licenses in the Commonwealth of Virginia. NRC would transfer 386 licenses to the commonwealth's jurisdiction. In addition, the commonwealth would retain regulatory authority for approximately 216 NARM licenses. Approximately 180 of these NARM licenses are dually regulated by Virginia and the NRC.

By law, NRC would retain jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in the state. In addition, NRC would retain authority for the review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials within the state.

Before entering into the agreement, NRC must determine that Virginia's radiation control program is adequate to protect public health and safety, and is compatible with the agency's own program for regulating the radioactive materials covered in the agreement.

The proposed agreement and the NRC staff's draft assessment of the Virginia program will be published for public comment soon in the *Federal Register*, and also will be published for comment thereafter, once a week for four consecutive weeks. Comments should be sent to Michael T. Lesar, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Copies of the proposed agreement, the Governor's request and supporting documents, as well as the NRC staff's assessment are available through the NRC's ADAMS. Help in using ADAMS is available by contacting the NRC Public Document Room staff at 301-415-4737 or 1-800-397-4209, or by sending an e- mail message to PDR.Resource@nrc.gov. These documents are also available for public inspection at the NRC Public Document Room at 11555 Rockville Pike, Rockville, Maryland.

Thirty-five other states have previously signed such agreements with NRC. They are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin.

More information about the Agreement State program is available on the NRC's Web site at: http://nrc-stp.ornl.gov/.

NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION
Office of Public Affairs Telephone: 301/415-8200
Washington, D.C. 20555-0001
Email: opa.resource@nrc.gov
Site: http://www.nrc.gov

No. 09-092 May 26, 2009

NRC CONSIDERING REQUEST BY NEW JERSEY TO BECOME AN "AGREEMENT STATE"

The Nuclear Regulatory Commission is considering a request from New Jersey Gov. Jon S. Corzine to assume part of the NRC's regulatory authority over certain nuclear materials in the state. If the request is accepted, New Jersey will become the 37th state to sign such an agreement with the NRC.

Under the proposed agreement, the NRC would transfer to New Jersey the responsibility for licensing, rulemaking, inspection and enforcement activities for: (1) radioactive materials produced as byproducts from the production or utilization of special nuclear material (SNM-- enriched uranium or plutonium); (2) naturally occurring or accelerator-produced byproduct material (NARM); (3) source material (uranium and thorium); (4) SNM in quantities not sufficient to support a nuclear chain reaction; and (5) the regulation of the land disposal of source, byproduct, and SNM received from other persons.

If the proposed agreement is approved, the NRC would transfer an estimated 500 licenses for radioactive material to New Jersey's jurisdiction. New Jersey would retain regulatory authority over approximately 500 NARM licensees, including 300 who also hold NRC licenses. These licensees would have their NRC and New Jersey licenses combined into a single state license. In total, New Jersey would then have jurisdiction over approximately 700 licenses.

By law, NRC would retain jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in the state. In addition, NRC would retain authority for: (1) the review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials; and (2) the regulation of the tailings and other wastes from uranium milling within New Jersey.

Before entering into the agreement, the NRC must determine that New Jersey's radiation control program is adequate to protect public health and safety and is compatible with the agency's own program for regulating the radioactive materials covered in the agreement.

The proposed agreement and the NRC staff's draft assessment of the New Jersey program will be published for public comment May 27 in the *Federal Register*, and repeated weekly for a total of four weeks. Comments should be sent to Michael T. Lesar, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Copies of the proposed agreement, the Governor's request and supporting documents, as well as the NRC staff's assessment are available through the NRC's ADAMS. Help in using ADAMS is available by contacting the NRC Public Document Room staff at 301-415-4737 or 1-800-397-4209, or by sending an e- mail message to PDR.Resource@nrc.gov. These documents are also available for public inspection at the NRC Public Document Room at 11555 Rockville Pike, Rockville, Maryland.

Thirty-six other states have previously signed similar agreements with the NRC. They are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

More information about the Agreement State program is available on the NRC's Web site at: http://nrc-stp.ornl.gov/.

NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION
Office of Public Affairs Telephone: 301/415-8200
Washington, D.C. 20555-0001
Email: opa@nrc.gov
Site: http://www.nrc.gov

No. 09-056 March 24, 2009

NRC COMPLETES VIRGINIA AGREEMENT TO REGULATE CERTAIN RADIOACTIVE MATERIALS

The Nuclear Regulatory Commission has completed an agreement with the Commonwealth of Virginia, under which Virginia will assume NRC's regulatory authority over certain nuclear materials in the state.

Virginia becomes the 36th state to sign such an agreement with the NRC. The agreement is effective March 31.

Under the agreement, the NRC will transfer to Virginia the responsibility for licensing, rulemaking, inspection and enforcement activities for: (1) radioactive materials produced as a result of processes related to the production or utilization of special nuclear material (SNM); (2) naturally occurring or accelerator-produced radioactive material (NARM); (3) source material (uranium and thorium); and (4) SNM in quantities not sufficient to form a critical mass.

The NRC will transfer 386 licenses to the commonwealth's jurisdiction. In addition, the commonwealth retains regulatory authority for approximately 216 NARM licenses. Approximately 180 of these NARM licenses currently are regulated by both Virginia and the NRC.

By law, NRC retains jurisdiction over commercial nuclear power plants and federal agencies using certain nuclear material in Virginia. In addition, NRC retains authority for the review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials manufactured in Virginia and distributed throughout the country.

Before approving the agreement, NRC reviewed Virginia's radiation control program to ensure it is adequate to protect public health and safety and is compatible with the agency's own program for regulating the radioactive materials covered in the agreement. An announcement of the proposed agreement was published four times in the *Federal Register* in

November and December, inviting comments from the public. The agency received one comment in favor of the proposed agreement.

The agreement will be announced soon in the *Federal Register*. Copies of the agreement, the Governor's request and supporting documents, as well as the NRC staff's assessment are available through the NRC's ADAMS. Help in using ADAMS is available by contacting the NRC Public Document Room staff at 301-415-4737 or 1-800-397-4209, or by sending an email message to PDR.Resource@nrc.gov. These documents are also available for public inspection at the NRC Public Document Room at 11555 Rockville Pike, Rockville, Md.

Thirty-five other states have previously signed such agreements with NRC. They are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin.

More information about the Agreement State program is available on the NRC's Web site at: http://nrc-stp.ornl.gov/.

NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION
Office of Public Affairs Telephone: 301/415-8200
Washington, D.C. 20555-0001
Email: opa.resource@nrc.gov
Site: http://www.nrc.gov

No. 09-160 September 28, 2009

NRC COMPLETES NEW JERSEY AGREEMENT TO REGULATE CERTAIN RADIOACTIVE MATERIALS

The Nuclear Regulatory Commission has completed an agreement with New Jersey, under which the state will assume NRC's regulatory authority over certain radioactive materials. New Jersey becomes the 37th NRC Agreement State, effective Sept. 30.

Under the agreement, the NRC will transfer to New Jersey the responsibility for licensing, rulemaking, inspection and enforcement activities for: (1) radioactive materials produced as byproducts from the production or utilization of special nuclear material (SNM – enriched uranium or plutonium); (2) naturally occurring or accelerator-produced byproduct material (NARM); (3) source material (uranium and thorium); (4) SNM in quantities not sufficient to support a nuclear chain reaction; and (5) the regulation of the land disposal of source, byproduct, and SNM received from other persons.

The NRC will transfer an estimated 500 licenses for radioactive material to New Jersey's jurisdiction. New Jersey will retain regulatory authority over approximately 500 NARM licensees, including 300 who also hold NRC licenses. These licensees would have their NRC and New Jersey licenses combined into a single state license. In total, New Jersey would then have jurisdiction over approximately 700 licenses.

The NRC will retain jurisdiction over commercial nuclear power plants, fuel cycle facilities and federal agencies using certain nuclear material in the state. In addition, the NRC will retain authority for: (1) the review, evaluation and approval of sealed radioactive materials and devices containing certain nuclear materials; and (2) the regulation of the tailings and other wastes from uranium milling within New Jersey.

Before approving the agreement, the NRC reviewed New Jersey's radiation control program to ensure it was adequate to protect public health and safety, and is compatible with

the agency's own program for regulating radioactive materials. An announcement of the proposed agreement was published four times in the *Federal Register* in May and June, inviting comments from the public. The agency received six comment letters – two supporting the agreement, two opposed, one that supported the rationale of states assuming regulatory authority but not the fee differences that will occur, and one general comment that did not express support or opposition.

The agreement will be announced shortly in the *Federal Register.* Copies of the agreement, the Governor's request and supporting documents, as well as the NRC staff's assessment will be available through the NRC's ADAMS document library. Help in using ADAMS is available by contacting the NRC Public Document Room staff at 301-415-4737 or 1-800-397-4209, or by sending an email message to PDR.Resource@nrc.gov. These documents are also available for public inspection at the NRC Public Document Room at 11555 Rockville Pike, Rockville, Md.

Thirty-six other states have previously signed similar agreements with the NRC. They are: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

More information about the Agreement State program is available on the NRC's Web site at: http://nrc-stp.ornl.gov/.

Appendix E
Tribal Interactions During the Agreement Process

1.0 INTRODUCTION

1.1 Purpose

Appendix E provides NRC staff guidance for interacting with Tribal governmental entities during the Agreement State application process. The NRC staff should use Appendix E when reviewing the original request or reviewing an amendment to an existing Agreement.

1.2 Scope

Prior sections of the Handbook cover other topics that a State must address in submitting a request for an Agreement and the steps the NRC staff should take in processing the Agreement State application. In particular, Section 3.0 of the Handbook provides detailed steps in the procedure followed by the NRC staff to evaluate the request. Additional sections in SA-700 provide information concerning the procedure followed by the NRC staff for requesting public comment on the proposed Agreement, preparation of the decision paper for Commission approval, and final implementation of the Agreement. Appendix E provides information on how the NRC staff should implement the principles articulated in the NRC's Tribal Policy Statement (TPS) and Management Directive 5.1 during the Agreement State application process.

2.0 BASIS OF THE GUIDANCE

Appendix E is based on the TPS, Management Directive 5.1 (MD 5.1), the NRC's Tribal Protocol Manual (TPM), and Tribal procedure (TR) 100, which provide guidance on interacting with tribal governments. The documents are summarized below.

2.1 Tribal Policy Statement (82 FR 2402; 1/9/17) (https://www.federalregister.gov/documents/2017/01/09/2017-00091/tribal-policy-statement)

On January 9, 2017, the NRC issued the TPS "to establish policy principles to be followed by the NRC to promote effective government-to-government interactions with Indian Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction.". The policy articulates the NRC's six principles the NRC staff should follow to promote effective government interactions with federally recognized tribes.[2] The principles are:

1. The NRC Recognizes the Federal Trust Relationship With and Will Uphold Its Trust Responsibility to Indian Tribes
2. The NRC Recognizes and Is Committed to a Government-to-Government Relationship With Indian Tribes

[2] Federally recognized tribes are identified in the BIA list (check for latest list in Federal Register). The tribes meet specific criteria to receive special benefits from the federal government.

3. The NRC Will Conduct Outreach to Indian Tribes
4. The NRC Will Engage in Timely Consultation
5. The NRC Will Coordinate With Other Federal Agencies
6. The NRC Will Encourage Participation by State-recognized Tribes

The policy principles apply to Agreement State applications. In particular, Principle 3 promoting tribal outreach to keep Indian Tribes informed about the agency's actions and plans, Principle 4 promoting the NRC to provide timely notice and consult in good faith with Tribal governments, and Principle 6 encouraging participation by State-recognized tribes[3] apply in this situation.

The discontinuance of the NRC's regulatory authority and the Agreement State's assumption of regulatory authority for radioactive materials and activities covered under the Agreement would not be considered in the scope of "Regulatory Activities with Tribal Implications" under the TPS. It is unlikely that consultation with a Tribe will occur as a result of an Agreement State application review. Given the requirement in the AEA that an Agreement State Program be equivalent to the NRC's program and that the environmental and historical aspects of National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) fall outside of the NRC's review of a State's proposed program, the Agreement State application process are not issues with substantial and direct effects to the Tribes. However, due to the possibility that an application contains a unique item that may merit consultation in accordance with MD 5.1, each application should be reviewed on its merits to determine whether consultation is appropriate. Additionally, all requests from Tribes for consultation concerning an Agreement State application should be reviewed on their merits and in conjunction with OGC to determine an appropriate course of action. As a result of the Agreement and assumption of regulatory authority by the State, Tribes will no longer have direct involvement with the NRC. Agreement State actions will be subject to the State's environmental, historic/cultural preservation, and tribal interactions regulations and procedures.

The TPS supports NRC's tribal outreach activities beginning at the Letter of Intent stage of an Agreement State application for federally recognized tribes and encourages participation by State-recognized tribes in the regulatory process. The TPS also designates the NRC's tribal liaisons (TLs) and RSLOs to 1)be the primary points of contact for Indian Tribes; 2) coordinate with other programmatic offices; and 3) educate the NRC staff about Tribal issues including cultural sensitivity and the Federal Trust Responsibility.

2.2. "MD 5.1, "Consultation and Coordination with Governments and Indian Tribes" (*2020*) https://www.nrc.gov/docs/ML1123/ML112351312.pdf

MD 5.1 addresses general responsibilities for consultation and coordination with States, federally recognized tribes, other federal agencies, local governments, and national or regional organizations of governmental agencies. It is the policy of the NRC to ensure appropriate consultation at the earliest possible stage between the NRC and States, local governments, other federal agencies, and Indian Tribes, and national and regional associations regarding major interagency agreements, major organizational changes,

[3] State-recognized tribes have a special status and recognition by an individual State, but not the federal government.

major rules and regulations, statements of policy, guides, and standards, and major studies that may have a significant State or local impact.

2.3 "Tribal Protocol Manual Guidance for NRC Staff" (2018)(NUREG-2173, Revision 1) (https://www.nrc.gov/docs/ML1821/ML18214A663.pdf)

The TPM provides basic historical information about the federal and tribal government relationship and advice on interacting with tribal governments. The TPM facilitates effective consultations and interactions between the NRC and tribes related to activities within the scope of the NRC's jurisdiction. The TPM explains that tribes are unique governmental entities and are not extensions of State or local governments. Each federally recognized tribe is a domestic, dependent sovereign nation with its own customs, culture, concerns, interests, and needs. The TPM assists NRC management and staff in recognizing these distinctions and creates a more open and productive working relationship with tribal governments.

The TPM is a reference tool produced from multiple sources, including interviews with the NRC staff and management, other federal agencies' personnel, and Tribal representatives who are experienced in working with Tribes. NRC management and staff can use this guide to develop and maintain government-to-government relationships with Tribal governments. The TPM supplements the NRC staff's working knowledge by providing Tribal outreach experience and practical guidance to NRC personnel who have had limited interactions with Indian Tribes.

2.4 TR-100, "Tribal Liaison Roles and Responsibilities" (Dec. 19, 2018) (https://scp.nrc.gov/procedures/tr100.pdf)

TR-100 describes the roles and responsibilities of the TLs at Headquarters and the RSLOs[4] in the NRC's four regional offices that share the responsibilities for the Tribal liaison functions. The document also provides information for how the NRC staff can coordinate with the TLs and RSLOs. This procedure supplements MD 5.1 and SL-100, "Regional State Liaison Officers Program," and describes the requirements imposed on the staff by the NRC's TPS.

3.0 REVIEW PROCEDURES

3.1 Timing of Interactions

The attached table (Enclosure 1) provides a quick summary of actions that should be taken during the application process to notify tribes of: 1) the application's status, 2) general information about the Agreement State program, and 3) offers for further outreach and consultation. The table also indicates when to notify tribes of the proposed Agreement's public comment period and the effective date of the Agreement.

3.2 Assigning Tribal Liaison and Initial Contact with State

As soon as possible after receiving the Notice of Intent from the State's Governor's Office, the SALPB PM processing the Agreement State application should contact the

[4] The term TL also refers to the RSLO throughout this document. However, the Regional Administrator needs to approve an RSLO's involvement in this matter.

NMSS/MSST/Materials Safety and Tribal (MSTB) Branch chief for the assignment of a TL to support the application process. The TL assumes role as primary point of contact between the NRC and Tribes during the process. Shortly after assignment of the TL, the TL and PM would contact:

1. The State Radiation Control Program Point of Contact (State point of contact) to discuss potential tribal interactions and State legislative rulemaking plans; and
2. The State Historic Preservation Office (SHPO) to help identify potentially interested tribes and discuss State's tribal interaction policies and procedures.

The State POC for the Agreement can inform the NRC of the State's schedule for proposed legislation and rulemaking related to the State's Agreement program. The State POC and TL should also discuss potential tribal involvement in the State's legislative or rulemaking activities. Either the State POC or the TL should directly notify the tribal leader and Tribal Historic Preservation Officer (THPO) of interested tribes of public comment periods for relevant legislation and rulemaking during the application process. However, the NRC cannot delegate the NRC's Tribal Policy Statement or Federal Trust responsibilities to the State government.

The TL and PM should contact the SHPO to learn about the State tribal consultation practices during their licensing process and discuss tribes that may be potentially interested in the State's application. The SHPO should be copied on correspondence that is sent to the interested tribes.

3.3 Identification of Potentially Interested Tribes

The TL should identify tribal governmental entities that may be interested in the Agreement application and gather the tribal leader and THPO contact information before the PM posts the NRC application on the website. Potentially interested tribes will need to be notified if that if the Agreement is approved, the State would assume regulatory authority in areas outside of exclusive federal jurisdiction. For example, the Agreement State could become the regulatory authority over a tribal medical facility that uses radioactive material located outside a federally recognized tribe's reservation. Other potentially interested tribes would include out-of-state tribes with ancestral lands or treaty rights within the State. Additionally, national or regional tribal organizations may represent a group TL will also send an email containing the initial contact letter to the tribes.

The MSST Division Director should sign the initial contact letter to the interested tribes. The SALPB and MSTB branch chief should concur on the letter before submitting the letter for signature. The initial contact letter should contain: 1) basic information on the National Materials and Agreement State programs; and 2) offer further outreach to federally recognized tribes within the State, and out-of-state federally recognized tribes with ancestral lands or treaty rights within the State.

The initial correspondence to: 1) out-of-state federally recognized tribes that have expressed an interest in NRC regulatory activities within the State but lack ancestral lands or treaty rights within the State; 2) State-recognized tribes within the State; and 3) national or regional tribal governmental organizations should contain the same National Materials and Agreement State program information. However, the correspondence should not include an initial offer for further outreach. The NRC should

apply the TPS and MD 5.1 criteria when considering requests for consultation from these parties. In all cases OGC should be contacted to assess requests for consultation to ensure the appropriate interpretations of tribal recognition ad substantial and direct effect

Approximately two weeks after sending the initial contact letter, the TL should call the tribal leaders and THPO's Office to confirm receipt of the correspondence, establish a tribal POC, and assess the tribe's interest in additional outreach during the application process. Within two weeks after the calls, the TL should write a summary to inform the PM and SALPB and MSTB branch chiefs of the results of the initial contacts. To maintain a record, all written and electronic correspondence and phone conversation records with the tribes should be placed in ADAMS in accordance with NRC policy.

3.5 Subsequent Interactions

The TL will remain the main POC for tribes during the application process. The PM should discuss with the TL if they can continue to provide support, which could include drafting, reviewing, or sending tribal communications, and arranging meetings and webinars between the tribes and the NRC subject matter experts during the application process.

Many of the subsequent outreach and consultation activities focus on providing additional information about the status of the application process, including the State's development of their regulations and radiation control program, the NRC's staff's review of the State's program and application package, and the public comment period. The appropriate form of communication for these matters is indicated on table 1. The table designates the appropriate signature authority for these tribal communications. The MSTB branch chief should concur on the SALPB written tribal communications. The SALPB branch chief should concur on TL tribal emails. SALPB and MSTB staff should also share all tribal communications.

In some cases, individual tribes may be involved in developing specific agreements or license conditions to address or prevent adverse impacts to historic or cultural resources. Tribes may also be interested in the future decommissioning and closure of sites that could be transferred to the State. The NRC staff should be prepared to respond to tribal questions on these subjects and be able to offer additional outreach opportunities by phone, email, webinars, video conferencing, or face-to-face meetings with tribal governmental leaders and subject matter experts, when appropriate. The TL should arrange subsequent meetings between tribes and the NRC subject matter experts as needed. The TPS, MD 5.1, and the Tribal Protocol Manual provide additional further information on outreach and consultation with tribal governments.

The TL should summarize contacts with the tribes and tribal comments and develop responses to tribal comments for any Commission Papers concerning the Agreement. The TL should also support the Commission paper to resolve tribal comments and summarize tribal interactions as needed.

Within two weeks after the publication of the *Federal Register* notice announcing the Agreement, the TL and PM staff should draft a letter for the MSST Division Director to send to interested tribes regarding the effective date of the Agreement. The letter should also provide information on how the NRC considered a tribe's comments in the final agency decision on the Agreement application. The letter can include the final

Agreement, other public documentation of the decision-making process, such as Commission Papers (SECYs), Staff Requirements Memoranda (SRMs), and comment response documents. The TL should also send an email with this information to the tribal leader and THPO. Additional calls or meetings with the tribal leaders are other options to provide the tribe further information on this matter.

Sample letters are provided in Enclosure 2. To maintain a record, all written and electronic correspondence, and phone conversation records with the tribes and tribal government organizations should be placed in ADAMS in accordance with NRC policy.

3.6 Additional Guidance and Support

The NRC staff involved with interacting with tribes during the application process are required to watch the mandatory training video “Cultural Sensitivity: Engaging Native Americans in NRC’s Mission” currently available on the NRC’s Talent Management System (TMS). An additional video “Tribal Interactions: Staff Support and Other Resources” provides additional information on this topic. The NRC staff can also contact the TLs and RSLOs for further advice and support for their tribal interactions.

3.7 Enclosures

Enclosure 1 suggests times to engage tribes during the Agreement State application process.

Sample letters in Enclosure 2 concerning the Wyoming and Vermont Agreements can be used as a template for developing tribal correspondence.

Enclosure 1: Tribal Outreach Milestones During the Agreement State Application Process

Who	When	Method	Assigned to
All federally recognized tribes[5] within the State (Group 1) Out-of-state federally recognized tribes with ancestral lands within the State (Group 2) Out-of-state federally recognized tribes with treaty rights within the State (Group 3)	a. NRC website posted[6] b. Receipt of Draft Application[7] c. State's publication of draft regulations for comment (may be before receipt of Draft Application). d. One month before FRN opening public comment period on draft Agreement. e. Publication of FRN opening public comment period. f. Effective date of Agreement.	a. Letter and Call[8] b. Email c. Email d. Letter and email e. Letter and email f. Letter and email	a. SALB/TL[9] b. SALB c. SALB d. SALB/TL e. SALB/TL f. SALB/TL
Out-of-state federally recognized tribes that have expressed an interest in NRC regulatory activities within the State and State-recognized tribes within the State (Group 4)	Same as Group 1. Letter states that the NRC will consider requests under the TPS.	Same as Group 1	Same as Group 1
National or regional tribal organizations (Group 5)	a. NRC website posted[10] b. Effective date of Agreement.	a. Letter or email b. Letter or email	a. TL b. TL
SHPO should review NRC's list of tribes and tribal organizations for accuracy	Same as Group 1.	Same as Group 1	Same as Group 1

[8] The Bureau of Indian Affairs (BIA) provides a list of Federally recognized tribes (check for latest list in Federal Register). Tribal liaisons can help identify and provide contact information for federally recognized tribes, state recognized tribes, and national and regional tribal organizations that may have an interest in the Agreement State application.

[6] Agreement State application website will be posted by SALB within 6 months after the receipt of the Governor's Letter of Intent. The website will be modeled after the Wyoming and Vermont webpages and include application process milestones, frequently asked questions (Q&As),) and links to other appropriate webpages. .

[7] Draft applications can be for initial agreements or amendments.

[8] Tribal communications should be separately addressed to the tribal leader and the THPO (or other tribal historic preservation official when known).

[9] State Agreement and Liaison Program Branch (SALB) and Tribal Liaisons (TL) staff.

[10] The NRC would apply MD 5.1 criteria to Group 5 when considering offering or evaluating requests for outreach. Tribes in Group 1, 2, or 3 can also request that organizations in Group 5 represent them.

Enclosure 2: Templates for Tribal Letters

A. NRC's Letter to notify potentially interested tribal governmental entities that the Governor sent a Letter of Intent to submit an Agreement State application. [SA-700 Handbook, Appendix E Section 3.4 and Enclosure 1 Chart]

The MSST Division Director should send the letter to tribal leaders and THPOs after the posting of the NRC's Agreement application website (approximately 6 months after receiving the Letter of Intent).

1. ML16334A403 (package) and ML16334A413: Letter regarding Wyoming draft application that included fact sheet on Agreement State program and Q&As.

B. NRC's Letter to notify potentially interested tribal governmental entities that NRC has received the State's final application. [SA-700 Handbook, Appendix E Section 3.5 and Enclosure 1 Chart]

1. ML18018A863: Letter regarding final Wyoming application under review.
2. ML19142A263: Letter regarding final Vermont application under review.

C. NRC's Letter to notify potentially interested tribal governmental entities should be issued one month before the planned publication date of the FRN announcing the public comment period for the proposed Agreement and staff assessment. [SA-700 Handbook, Appendix E Section 3.5 and Enclosure 1 Chart]

1. ML19142A263: Letter regarding final Vermont application under review and upcoming publication of the FRN.

D. NRC's Letter to notify potentially interested tribal governmental entities of publication of FRN opening public comment period for the proposed Agreement and staff assessment. [SA-700 Handbook, Appendix E Section 3.5 and Enclosure 1 Chart]

1. ML18155A591 (package) and ML18155A592: Letter regarding FRN publication and request for comment on the proposed Wyoming Agreement and draft staff assessment.
2. ML19144A181: Letters regarding FRN publication and request for comment on proposed Vermont Agreement and draft staff assessment.

E. NRC's Letter to notify potentially interested tribal governmental entities of the effective date of the Agreement. [SA-700 Handbook, Appendix E Section 3.5 and Enclosure 1 Chart]

The letter should include a copy of the final Agreement, the SECY paper showing the Commission's consideration of any input or comments received from tribal governments, and NRC's response to a tribe's comments.

1. ML19029A403: Letter to Shoshone-Bannock Tribes regarding Wyoming agreement with response to comments.
2. ML19191A197: Letter providing notice of the final Vermont Agreement, no response to comments.