

**POLICY ISSUE
(Notation Vote)**

February 9, 2009

SECY-09-0022

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: SECTION 274b AGREEMENT WITH THE COMMONWEALTH OF VIRGINIA

PURPOSE:

To request Commission approval of the proposed Agreement with the Commonwealth of Virginia (also referred to as Virginia or the Commonwealth). This paper does not address any new commitments.

SUMMARY:

On June 12, 2008, Governor Timothy M. Kaine of Virginia requested that the Commission enter into an Agreement under Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Commission, through SECY-08-0154, "Proposed Agreement Between the Commonwealth of Virginia and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," dated October 15, 2008, agreed to publish a notice of the proposed Agreement (Enclosure 1) in the *Federal Register* (FR). The agency published the notice as required by the Act and requested comments. The public comment period ended on December 22, 2008, and the agency received one comment letter.

Based on the staff's review of the proposed Virginia program and analysis of the comment, the staff recommends that the Commission approve the Agreement (Enclosure 1).

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BACKGROUND:

In SECY-08-0154, the staff of the U.S. Nuclear Regulatory Commission (NRC) presented a draft of its assessment and discussed the statutory and policy background of the Virginia Agreement State program. The Commission approved the staff's recommendation to proceed with processing the application for the Virginia Agreement State program in the staff requirements memorandum (SRM) dated November 5, 2008. As required by Section 274e of the Act, the agency published the proposed Agreement in the FR on November 20, 2008 (73 FR 70384), November 26, 2008 (73 FR 72080), December 4, 2008 (73 FR 73961) and December 11, 2008 (73 FR 75470). The NRC made the full text of the staff assessment available through its Agencywide Documents Access and Management System (ADAMS) and Public Electronic Reading Room.

The Agreement will allow Virginia to assume regulatory authority for byproduct materials as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act; source materials; and special nuclear materials not sufficient to form a critical mass. Virginia is not seeking authority to (1) conduct safety evaluations of sealed sources and devices manufactured in Virginia and distributed in interstate commerce, (2) regulate Section 11e.(2) byproduct material resulting from the extraction or concentration of source material from ore processed primarily for its source material content, and its management and disposal, or (3) regulate land disposal of byproduct material or special nuclear material waste received from other persons.

DISCUSSION:**(1) Public Comments**

The NRC staff received one comment letter in response to a notice that the Governor of Virginia has proposed to enter into an Agreement with the Commission under Section 274b of the Act. The notice appeared in the FR on November 20, November 26, December 4, and December 11, 2008.

The FR notice requested comments regarding (1) the proposed Agreement, (2) the NRC staff assessment of the Virginia Agreement State program, (3) the adequacy of the Virginia Agreement State program, and (4) the adequacy of the Virginia Agreement State program staff. The comment received strongly supported the proposed Agreement between the NRC and the Commonwealth of Virginia.

In summary, the comment did not provide any new information that would change the conclusions in the staff assessment of the Virginia program, and the staff has not changed the assessment in response to the comment. Enclosure 2 contains the staff analysis of the public comment.

(2) SECY-08-0154

In SECY-08-0154, the NRC staff concluded that based on the draft assessment the Commonwealth satisfied the Commission's policy statement and therefore, met the requirements of Section 274 of the Act. The staff's final assessment (Enclosure 3) of the Virginia program reflects the same conclusion that the Commonwealth satisfies the Commission's policy statement and therefore meets the requirements of Section 274 of the Act.

(3) Transfer of Licenses

Currently, the NRC would transfer approximately 386 NRC licenses, either in whole or in part, to Virginia's jurisdiction.

The NRC staff is continuing to work closely with the Virginia staff to effect a smooth transition. The staff is coordinating with the Virginia staff on current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred to ensure the smooth continuation of regulatory actions after the transfer.

(4) Actions Pending against Licensees To Be Transferred

At the current time, the NRC Office of Investigations has one pending investigation that may result in escalated enforcement actions against an NRC licensee located within the Commonwealth. The NRC Office of Enforcement has one other pending enforcement action against another such licensee. Additionally, no allegations are currently open related to NRC licensees within the Commonwealth. The remaining open actions that the NRC is unable to close between now and the effective date of the Agreement will either continue to be handled by the NRC with the involvement of the Commonwealth or will be transferred to the Commonwealth. The NRC will work closely with the Commonwealth to ensure the smooth transition of authority over these open cases before the effective date of the Agreement.

(5) Outstanding Orders, Confirmatory Action Letters, and 10 CFR 2.206 Petitions against Licensees that Will Transfer

The NRC issued orders and license conditions for Increased Controls (EA-05-090) and Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials (EA-07-305) to licensees in the Commonwealth of Virginia. Twenty seven licensees are implementing these requirements based on the quantities of regulated materials that they possess. The NRC staff approved regulations implementing the Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials, which the Commonwealth will impose on the same licensees under the proposed Agreement.

(6) Status of Decommissioning Sites and Method for Providing Information on Previously Licensed Sites

The NRC has no decommissioning sites currently located in Virginia.

(7) Effective Date of the Agreement

Commission direction by March 1, 2009 would support a March 31, 2009 effective date allowing adequate time for the signing of the Agreement, the orderly transfer of the files, and the assumption of authority by the Commonwealth. (Enclosure 4).

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act to include certain NARM. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAAct requirements. Under the proposed Agreement, the Commonwealth will assume regulatory authority for these radioactive materials. Therefore, the time-limited waiver in the Commonwealth will terminate on the effective date of the Agreement, March 31, 2009, in accordance with the "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (72 FR 59157).

IMPLEMENTATION:

Following execution of the Agreement, the staff will continue to interact with the Commonwealth. This interaction will consist of the exchange of regulatory information, notices of NRC training courses, and conducting periodic onsite reviews of the Commonwealth's program for the regulation of Agreement materials. The regulatory information exchange includes reports of incidents, significant enforcement actions, and amendments to policies, regulations, or guidance. Communications are generally more frequent with a new Agreement State during the first few years after the Agreement is signed.

The staff will tentatively schedule an orientation meeting between NRC and the Virginia Department of Health staff for 9 months after the effective date of the Agreement to discuss the initial program implementation. The first Integrated Materials Performance Evaluation Program (IMPEP) review of the Virginia Agreement program will be tentatively scheduled for 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur at 4-year intervals. The interval may be shortened if performance weaknesses are identified during routine reviews or other interactions with Virginia.

If approved by the Commission, Virginia will bring the number of Agreement States to 36.

RESOURCES:

Staff estimates approximately 3 full-time equivalents (FTE) are required in Fiscal Year (FY) 2009 to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to Virginia. These resources are included in the FY 2009 budget within the Materials Users subprogram (materials licensing and materials inspection planned activities). The Office of Federal and State Materials and Environmental Management Programs anticipates a cost savings due to the transfer of regulatory authority to Virginia, and has incorporated the resource adjustment in the FY 2010 budget.

CONCLUSION:

The NRC staff concludes that the Commonwealth of Virginia satisfies the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," and therefore meets the requirements of Section 274 of the Act.

The proposed Virginia program to regulate Agreement program materials, comprising statutes, regulations, and procedures, is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Find:

- a. That the proposed Virginia program for the regulation of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass is compatible with the Commission's program for the regulation of like material; and
- b. That the proposed Virginia program is adequate to protect public health and safety within the Commonwealth with respect to the materials and uses covered by the proposed Agreement.

2. Approve:

- a. The proposed Agreement between the Commonwealth of Virginia and the NRC pursuant to Section 274 of the Act, as set forth in Enclosure 1.
- b. The proposed Agreement allowing adequate time for the signing of the Agreement, the orderly transfer of license files and the assumption of regulatory authority by the Commonwealth of Virginia on March 31, 2009.

3. Note:

- a. Approval of the proposed Agreement will result in the termination of the Commission-issued waiver (70 FR 51581) on the effective date of the Agreement, March 31, 2009. The Commonwealth of Virginia would then assume regulatory authority over NARM.
- b. The Governor of Virginia desires to sign the Agreement in a formal ceremony. Additional details regarding the formal ceremony will be provided, following approval of the proposed Agreement by the Commission (Enclosure 5).
- c. Pursuant to the Act, the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the Virginia congressional delegation and the Director of the Government Accountability Office of the Commission's decision.
- d. The NRC Office of Public Affairs will issue a press release.

- e. The agency will publish the text of the Agreement in the FR, as required by Section 274e of the Act, within 30 days after the Agreement is signed (Enclosure 6).

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a "major rule" under SBREFA.

/RA/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. Proposed Agreement between the NRC and the Commonwealth of Virginia
2. Staff Analysis of Public Comments
3. NRC Staff Assessment of the Virginia Program
4. Current Milestone Schedule for Processing the Proposed Agreement
5. Draft Letter from Chairman Dale E. Klein to Governor Timothy M. Kaine
6. Draft *Federal Register* Notice of Agreement Signing

ENCLOSURE 1

**PROPOSED AGREEMENT
BETWEEN THE NRC AND
THE COMMONWEALTH OF VIRGINIA**

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

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

WHEREAS, The Governor of the Commonwealth of Virginia is authorized under the Code of Virginia Section 32.1-235, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

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

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

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

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

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

ARTICLE I

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

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials; and
5. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

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

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons.

ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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

The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

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

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

ARTICLE VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

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

ARTICLE VIII

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

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

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

Done at [Richmond, Virginia] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

Dale E. Klein, Chairman

FOR THE COMMONWEALTH OF VIRGINIA

Timothy M. Kaine, Governor

ENCLOSURE 2

STAFF ANALYSIS OF PUBLIC COMMENTS

STAFF ANALYSIS OF PUBLIC COMMENTS ON THE PROPOSED VIRGINIA AGREEMENT

Commenter:

Affiliation:

1 Julia Schmitt, Chair

Organization of Agreement States

INTRODUCTION:

The U.S. Nuclear Regulatory Commission (NRC) staff received one comment letter in response to a notice that the Governor of Virginia has proposed to enter into an Agreement with the Commission under Section 274b of the Atomic Energy Act of 1954, as amended. The agency published the notice in the *Federal Register* on November 20, November 26, December 4, and December 11, 2008. The notice contained a copy of the proposed Agreement and a summary of the NRC staff's draft assessment of the proposed Virginia Agreement State program.

The *Federal Register* Notice requested comments in four categories: (1) the proposed Agreement, (2) the NRC staff assessment of the Virginia Agreement State program, (3) the adequacy of the Virginia Agreement State program, and (4) the adequacy of the Virginia Agreement State program staff. The comment received strongly supported the proposed Agreement between the NRC and the Commonwealth of Virginia.

COMMENTS ON THE PROPOSED AGREEMENT

(1) Comments Supporting the Agreement

Summary of Comments:

A letter from the Organization of Agreement States (OAS) strongly supports the Agreement between the NRC and the Commonwealth of Virginia. The Organization states "The OAS is committed to the improvement of radiation regulation nationwide, and to fostering a cooperative and productive partnership among Agreement States, with the U.S. Nuclear Regulatory Commission, and with other Federal, State and Local agencies involved in the regulation of radioactive materials."

NRC Staff Response:

The comment strongly supporting the Agreement between the NRC and the Commonwealth of Virginia supports the NRC staff's plan to complete the staff assessment documenting that the Commission's criteria for entering into an Agreement are satisfied, and then to request the Commission to approve the Agreement and place it into effect. These comments are consistent with the Commission's process for approval of an Agreement.

ENCLOSURE 3

**NRC STAFF ASSESSMENT
OF THE VIRGINIA PROGRAM**

**ASSESSMENT OF THE PROPOSED
VIRGINIA PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS
AS DESCRIBED IN THE REQUEST FOR AN AGREEMENT**

This assessment examines the ability of the proposed Virginia Agreement State program (the Virginia program) to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (the Act), as amended.¹ The U.S. Nuclear Regulatory Commission (NRC) performed this Assessment using the criteria in the Commission's policy statement entitled, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (hereafter referred to as the "criteria")² and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, "Processing an Agreement." The SA-700 procedure appears on the FSME Web site. Each criterion, and the staff assessment related thereto, is addressed separately below.

OBJECTIVES

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

The proposed Agreement State Program for the Commonwealth, regulating radioactive materials, would be located in the Division of Radiological Health (DRH), in the Office of Epidemiology, which is an organizational unit in the Virginia Department of Health, Office of Public Health (VDH). The VDH is designated by law to be the Commonwealth's radiation control agency. The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the VDH.

Although by law, certain authority for regulating radioactive material is delegated to the Virginia Board of Health, the Commissioner for Public Health is vested with all the authority of the Board when it is not in session. The Commissioner for Public Health is the head of the VDH and can then delegate these responsibilities to the appropriate Division. The Commissioner has delegated these responsibilities to the DRH.

The NRC staff verified that the Commonwealth's Radiation Protection Program design for distributing regulatory responsibilities to the program staff is similar to designs used successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

¹According to paragraph (a) of Section 274 of the Act, the radioactive materials subject to an Agreement under the Act are byproduct, source, and special nuclear materials.

²The agency published the NRC Statement of Policy in the *Federal Register* on January 23, 1981 (46 FR 7540-7546); the agency then published a correction on July 16, 1981 (46 FR 36969), and a revision of criterion 9 on July 21, 1983 (48 FR 33376).

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

RADIATION PROTECTION STANDARDS

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

In conjunction with the rulemaking authority vested in the Virginia Board of Health by Virginia Statute 32.1-229 of the Code of Virginia, VDH has the requisite authority to promulgate rules for protection against radiation.

The NRC staff verified that the VDH adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150 into Title 12 of the Commonwealth Regulations, Section 5-481, Radiation Protection Regulations. Therefore, VDH has adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

3. **Uniformity of Radiation Standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The Commonwealth, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act, as amended. The NRC staff verified that the Commonwealth adopted regulations compatible with 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

Virginia Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, Occupational Dose Limits and Subpart D, Radiation Dose Limits to Individual Members of the Public. Commonwealth licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, Commonwealth licensees are required to consider the radiation dose whether the sources are licensed or unlicensed.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. The NRC staff review verified that the Commonwealth has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, Commonwealth licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20. Therefore, the radiation labels, signs and symbols, and the posting and labeling requirements in the Commonwealth regulations are compatible with those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations 10 CFR Part 19.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

9. Radioactive Waste Disposal. **(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority. Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20. The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.**

The NRC staff review confirmed that the Commonwealth has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20 - Waste Disposal. These regulations deal with general requirements for waste disposal including waste classification, transfer, and waste manifests and are applicable to all licensees.

The staff therefore concludes that Criterion 9(a) is satisfied.

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

The NRC staff review confirmed that the Commonwealth is not seeking authority to regulate the land disposal of low-level radioactive waste. Therefore, Criterion 9(b) does not apply to the Commonwealth.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Part 71. The Commonwealth's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The Commonwealth has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

12. **Additional Requirements and Exemptions. Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.**

The NRC staff has verified that the Commonwealth has adopted a regulation which is compatible with 10 CFR 30.34, Terms and conditions of licenses, in 12 VAC 5-481-500. The Commonwealth regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and the rules. The agency also has legal authority to grant reasonable and necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. **Prior Evaluation of Hazards and Uses, Exceptions. In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards, and the capability of the user or possessor prior to his receipt of materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups: those materials and uses which may be**

completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating specific use.

The Commonwealth has adopted regulations containing regulatory requirements for applying for and issuing licenses that are compatible with NRC's regulations.

The NRC staff review confirmed that the Commonwealth's regulations provide that only NRC may issue a license authorizing the distribution of agreement materials that will subsequently be exempt from regulatory control.

Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained by the NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The Commonwealth has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review determined that the Commonwealth established a series of checklists, regulatory guides, licensing procedure guides and a set of applicable forms. The Commonwealth developed a series of regulatory guides for use by license applicants. The NRC staff determined that the licensing procedure guides cover the handling of license applications from the point of submittal through issuance of the completed license. The Commonwealth licensing procedures are similar to NRC's procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

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

The NRC staff verified that the Commonwealth has adopted regulations compatible to the NRC regulations in 10 CFR Part 35. Therefore the Commonwealth's regulations include training and experience requirements for use of radioactive material which are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

INSPECTION

16. Purpose, Frequency. **The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.**

The NRC staff confirmed that the Commonwealth has statutory authority to conduct inspections of licensees. The Commonwealth has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The Commonwealth has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC. The Program staff has developed internal procedures and accompanying forms for the inspection areas which cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review confirmed that Commonwealth law provides authority for radiation control Program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review determined that the Commonwealth has adopted procedures to convey a copy of the formal inspection report to the licensees, both when violations are found, and when no violations are found. The procedures identify the staff responsible and specify the time limit for preparing the inspection report, the process for management review and approval, and provide instructions for distribution of the report to the licensee and to the Commonwealth's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

ENFORCEMENT

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

The NRC staff review confirmed that the Commonwealth is authorized by law to enforce the Commonwealth's regulations using a variety of sanctions, including the imposition of administrative fines, the issuance of orders to suspend, modify or revoke licenses, and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with Commonwealth Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The Commonwealth enforcement procedures are similar to the NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

PERSONNEL

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

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life science, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training - radiation protection.

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

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in the field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those

applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

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

Based on the review of the organizational charts and position descriptions for the VDH, the VDH training and qualification plan, and the curricula vitae for the current staff members, the NRC staff concludes that the VDH has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are 386 NRC specific licenses in the Commonwealth. The Commonwealth currently conducts a licensing and inspection program for naturally occurring or accelerator-produced radioactive material (NARM) users. There are approximately 216 NARM licenses in the Commonwealth. Approximately 180 of the NARM licenses are dually licensed by the Commonwealth and the NRC. It is estimated that there will be approximately 420 total Commonwealth licenses.

The staff of the Radioactive Materials Program (RMP) will be responsible for implementing the Agreement State Materials Program. The Commonwealth staffing plan allocates nine staff to the materials program: six Radiation Safety Specialists for licensing and inspection, one Supervisor, and two Program Support Staff. Currently there are four licensing and inspection staff and the RMP supervisor in place. Additionally, one full-time equivalent (FTE) program support staff is available in the business unit. Radiation Safety Specialists will work in all aspects of the materials program. They will perform inspections, conduct licensing reviews, and participate in enforcement activities. The Radiation Safety Specialists will devote all of their time to the Agreement State program. All of the RMP supervisor's time will also be devoted to the Agreement State program. That time will be divided among various duties, including management review of licensing and inspection actions, personnel responsibilities, rules development, inspector accompaniments, general supervision, and other management duties.

Based on the RMP staffing allocation of nine technical, supervisory and administrative FTE for the Agreement State program, and subtracting the two Radiation Safety Specialists and one Program Assistant that will be requested for hire in FY 2009, the technical, supervisory, and administrative staffing level devoted to the Agreement State

program is 6 FTE. The Review Team's evaluation of the State's staffing analysis concludes that adequate staffing exists for the RMP without the two additional Radiation Safety Specialists and one additional Program Assistant.

The two additional Radiation Safety Specialist FTE and one Program Assistant FTE that will be added to the RMP at a later date will provide extra strength and flexibility to the RMP.

The Commonwealth's estimate of approximately 420 licensees has resulted in an RMP estimate that the current RMP staff of six FTE is adequate for transition to becoming an Agreement State. This projection is based on data from the NRC Region I Office. This level of staffing should allow for keeping the inspection program and licensing program current. Based on the workload analysis, NRC staff concludes that the four Radiation Safety Specialists, the RMP Supervisor, and the Program Support Staff provide an adequate level of staffing to handle anticipated licensing, inspection, allegation, and incident response actions.

The staff concludes that the proposed RMP has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the RMP's staff who will be involved in the Agreement State Materials Program and the procedures for training and qualifying new staff members. Under the proposed Agreement, the RMP Supervisor will direct the Agreement State Materials Program and will be primarily responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Materials Program. This individual holds a bachelors degree in Business. He has over 14 years experience in health physics and supervision. He has 8 years Agreement State materials program experience, including experience in an Agreement State materials program from another state, and 6 years of radiological experience in the U.S. Navy.

Based on the NRC staff review, all of the non-supervisory technical staff members have at least a bachelor's degree in a physical or life science. One staff member has a bachelor's degree in environmental studies, one staff member has a bachelor's degree in environmental health, one staff member has a bachelor's degree in zoology and a master's degree in science teaching, health physics, and the remaining staff member has a master's degree in physics.

The RMP's technical staff has significant health physics and radiation science experience. This includes work in health physics at state regulatory agencies, the military, and private industry. RMP technical staff has completed or are scheduled to complete the NRC recommended core courses, or have received waivers from the RMP supervisor in accordance with RMP training procedures, based on their prior training and experience.

RMP technical staff has accompanied NRC staff on inspections of NRC licensees in the Commonwealth. Additionally, the RMP staff has been inspecting and processing

licensing actions for NARM users in the Commonwealth; performing approximately 80 inspections and processing approximately 150 licensing actions annually. Several of the technical staff have licensing and/or inspection experience from prior employment in other Agreement State materials programs.

NRC staff believes that the RMP technical staff identified by the Commonwealth to participate in the Agreement State Materials Program are trained in accordance with the RMP plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

The NRC staff concludes that the proposed RMP has a sufficient number of adequately trained staff to transition to the Agreement State Materials Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Program Organization and Staff Descriptions, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

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

The NRC staff review did not note any aspects of the RMP that could potentially interfere with duties imposed on a holder of materials by the NRC. In addition, the Commonwealth's regulations specifically exempt areas of exclusive NRC or other Federal jurisdiction from Commonwealth regulation. The staff is therefore satisfied that the RMP will not interfere with duties imposed on the holder of materials by the NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

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

unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

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

The NRC staff determined that the Commonwealth's definition of special nuclear material in quantities not sufficient to form a critical mass in 12 VAC 5-481-10 is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

ADMINISTRATION

23. Fair and Impartial Administration. **State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:**
- a. **Formulation of rules of general applicability;**
 - b. **Approving or denying applications for licenses or authorization to process and use radioactive materials; and**
 - c. **Taking disciplinary actions against licensees.**

The NRC staff review confirmed that the VDH is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of allegers, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27.

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

The NRC staff determined that the VDH is designated by VA Statute 32.1-228.1 to be the lead agency for the carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by Commonwealth and local authorities. In addition, to the extent that this criterion deals with duplicate regulation between a State and the NRC (see FSME Procedure SA-700 Handbook, Evaluation Criteria 4.1.1.2., paragraph b, and 4.2.2.2), the staff determined that the RMP, which specifically excludes from Commonwealth regulation any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, gives sufficient assurance against duplicate regulation between the Commonwealth and the NRC in the regulation of agreement material.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27.

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

The NRC staff review confirmed that Commonwealth Statute 32.1-229.3(B) contains a provision that provides for recognition of existing NRC and Agreement State licenses. Commonwealth regulation 12 VAC 5-481-550 recognizes NRC licenses while 12 VAC 5-481-590 provides a process for recognition of other Agreement State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27. Commonwealth regulations 12 VAC 5-481.

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

The NRC staff review verified that the proposed Agreement commits the Commonwealth to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the RMP will continue to be compatible with the NRC's program for the regulation of agreement materials.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC regarding Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The Commonwealth has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes 32.1-229. Commonwealth regulations 12 VAC 5-481.

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

- a. **Byproduct material as defined in Section 11e(1) of the Act,**
- b. **Byproduct material as defined in Section 11e(2) of the Act,**
- c. **Source material,**
- d. **Special nuclear material in quantities not sufficient to form a critical mass,**
- e. **Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;**

but must relate to the whole of such category or categories and not to a part of any category. If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later Agreement.

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

The NRC staff review verified that the proposed Agreement provides for the Commission to relinquish, and the Commonwealth to assume, regulatory authority over the types of material defined in categories a, c, and d above.

Since this criterion was adopted, the Commission determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be

distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The Commonwealth has chosen not to assume that authority.

The proposed Agreement stipulates the desirability of reciprocal recognition of NRC and other Agreement State licenses, and commits the Commission and the Commonwealth to recognize such reciprocity. The Commonwealth's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes 32.1-227, 32.1-238. Commonwealth Regulations 12 VAC 5-481.

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

The NRC staff review verified that the Commonwealth has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. The NRC staff concludes that the Commonwealth regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Virginia regulations 12 VAC 5-481.

STAFF CONCLUSION

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth in the application for an Agreement in letter dated June 12, 2008, from Governor Kaine to Chairman Klein, and the supporting information provided by the staff of the VDH.

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

- (a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and
- (b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the Commonwealth of Virginia meets the requirements of the Act. The RMP, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

ENCLOSURE 4

**CURRENT MILESTONE SCHEDULE FOR
PROCESSING PROPOSED AGREEMENT**

Processing Schedule for VA Agreement

EVENT	EVENT TIME	ELAPSED TIME WEEKS	ANTICIPATED DATE	ACTUAL DATE
Part 1 – Review of the Request for the Agreement (24 weeks lapse time – no unresolved issues)				
Receipt of draft request	0	0	x	x
Team concludes completeness review	3	3	x	x
A completeness comment letter mailed	3	6	x	x
Receipt of formal request	8	14	x	6/19/08
Team review of formal request finished ¹	8	22	8/21/08	8/22/08
PM completes Commission Paper, including draft staff assessment and FR Notice	2	24	9/4/08	9/08/08
Part 2 - FR publication & public comment period (16 weeks lapse time – no unresolved issues)				
NRC Offices concur on Commission Paper ²	3	27	9/25/08	10/01/2008
EDO sends Paper to Commission	2	29	10/9/08	10/15/2008
Commission approves publication	2	31	10/23/08	11/05/2008
First publication in FR	1	32	10/30/08	11/20/2008
Public comment period ends	4	36	11/27/08	12/22/2008
PM analyzes comments; completes final assessment and Commission paper	4	40	1/05/09	1/07/09
Part 3 - Final processing and Commission approval (13 weeks lapse time)				
NRC Offices concur on final assessment and paper ²	3	43	1/26/09	2/03/09
EDO signs paper	2	45	2/09/09	
Commission SRM approving Agreement	4	49	3/01/09	
Effective date of Agreement	4	53	3/31/09	

¹presumes no unresolved issues

²presumes two week office concurrence

ENCLOSURE 5

**DRAFT LETTER
FROM
CHAIRMAN DALE E. KLEIN
TO
GOVERNOR TIMOTHY M. KAINÉ**

DRAFT

The Honorable Timothy M. Kaine
Governor
Commonwealth of Virginia
Richmond, VA 23219

Dear Governor Kaine:

I am pleased to inform you that the U. S. Nuclear Regulatory Commission (NRC) has approved your request for an Agreement under which the NRC will discontinue and the Commonwealth of Virginia will assume regulatory authority over the acquisition, possession, use, transfer, and disposal of certain byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass.

(Details of the arrangements for the signature ceremony to be added once finalized)

We are pleased with your interest in participating in the Agreement State program and look forward to the continued excellent relationship we have enjoyed with the Commonwealth of Virginia in the past.

Sincerely,

Dale E. Klein

ENCLOSURE 6

**DRAFT
FEDERAL REGISTER NOTICE OF
AGREEMENT SIGNING**

U. S. Nuclear Regulatory Commission

Commonwealth of Virginia: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the Commonwealth of Virginia; Notice of Waiver Termination

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Agreement between the U.S. Nuclear Regulatory Commission and the Commonwealth of Virginia.

SUMMARY: This notice is announcing that on **TBD-Signature ceremony date**, Dr. Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Timothy M. Kaine of the Commonwealth of Virginia signed an Agreement as authorized by Section 274b of the Atomic Energy Act of 1954, as amended (the Act). The Agreement provides for the Commission to discontinue its regulatory authority and for Virginia to assume regulatory authority over the possession and use of byproduct material as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act, source material, and special nuclear materials (in quantities not sufficient to form a critical mass). Under the Agreement, a person in Virginia possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the Federal Register (FR) and are codified in the Commission's regulations as 10 CFR Part 150. The Agreement is published here as required by Section 274e of the Act.

NOTICE OF WAIVER TERMINATION: On March 31, 2009, the Commission terminated the time-limited waivers of the Energy Policy Act of 2005 requirements granted by the Commission (70 FR 51581; August 31, 2005) to Virginia for byproduct material as defined in Sections

11e.(3), and 11e.(4) of the Act.

FOR FURTHER INFORMATION CONTACT: Monica Orendi, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-3938; e-mail : monica.orendi@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC published the draft Agreement in the FR for comment once each week for 4 consecutive weeks on November 20, 2008 (73 FR 70384), November 26, 2008 (73 FR 72080), December 4, 2008 (73 FR 73961), and December 11, 2008 (73 FR 75470), as required by the Act. The public comment period ended on December 22, 2008. The Commission received one comment letter. The comment did not affect the NRC staff's assessment, which finds that the Virginia Agreement materials program is adequate to protect public health and safety and compatible with the NRC's program. The proposed Virginia Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Virginia, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Virginia Department of Health, the NRC staff completed an assessment of the Virginia program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on NRC's Web site. Based on the staff's assessment, the Commission determined on **TBD-Date of SRM**, that the proposed Virginia program for control of radiation hazards is adequate to protect public health and safety, and compatible with the Commission's program.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Documents referred to in this notice and other publicly available documents are available electronically at the NRC's Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this ____ day of _____, 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission

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

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

WHEREAS, The Governor of the Commonwealth of Virginia is authorized under the Code of Virginia Section 32.1-235, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

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

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

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

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

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

ARTICLE I

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

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials; and
5. Special nuclear materials in quantities not sufficient to form a critical mass.

ARTICLE II

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

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons.

ARTICLE III

With the exception of those activities identified in Article II.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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

The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

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

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

ARTICLE VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

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

ARTICLE VIII

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

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

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

Done at [Richmond, Virginia] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR
REGULATORY COMMISSION

Dale E. Klein, Chairman

FOR THE COMMONWEALTH OF VIRGINIA

Timothy M. Kaine, Governor