

TRANSFER OF NRC LICENSE FILES TO AGREEMENT STATE(S)

2882-01 PURPOSE

This manual chapter establishes methodology and procedure for the transfer of NRC license files to a state that has entered into an agreement with the NRC pursuant to subsection 274b of the Atomic Energy Act.

2882-02 OBJECTIVES

02.01 Define a system for identifying those licenses for which a state entering into an agreement will assume regulatory authority. |

02.02 Ensure license files are complete and up to date before transfer.

02.03 Establish a transfer procedure.

2882-03 APPLICABILITY

Applies to all NRC licenses for which a state will assume regulatory authority under a 274b agreement.

2882-04 RESPONSIBILITIES AND AUTHORITIES

04.01 Materials Safety and Inspection Branch. Resolves complications which may arise during the transfer of files. |

04.02 Branch Chief, Regional NRC Offices

- a. Before the effective date of the 274b Agreement, the Branch Chief of the Regional Office shall identify all licenses affected by the agreement and prepare the license files for transfer or retention in accordance with the procedure under 2882-06.
- b. Coordinate planning and transfer with the Agreement State Officer (Regions I, II, III, IV) who, in turn, will coordinate with the Office of State and Tribal Programs. |

04.03 Regional Inspection Staff. During an appropriate interval, before transfer of the license files, special effort should be taken to:

- a. Inspect all licenses due for inspection within 90 days after the effective date of the agreement.
- b. Close out all expired licenses.
- c. Obtain management concurrence.

04.04 Regional Enforcement Staff. Close out enforcement actions and/or document the status of those actions. Open enforcement actions must be summarized in the Commission (SECY) paper seeking approval of the Agreement. Provide the information to the Office of State and Tribal Programs.

04.05 Regional Allegations Staff. Consult Management Directive 8.8, "Management of Allegations" for actions to be taken.

04.06 Regional Licensing Staff

- a. Continue licensing actions up to the effective date of the agreement.
- b. Coordinate activities with HQ licensing staff.
- c. Obtain management concurrence.

04.07 Sealed Source and Device (SS&D) Evaluation Staff. If the Agreement transfers SS&D activity, then the following actions apply.

- a. Continue evaluation actions up to 30 days prior to the effective date of the agreement.
- b. Coordinate licensing activities with HQ licensing staff.
- c. Obtain management concurrence to transfer SS&D registration.

2882-05 DISCUSSIONS

When a State enters into an agreement with the NRC under Section 274b of the Atomic Energy Act, regulatory authority for certain Commission licensed activities is transferred to that State (Agreement State). Existing NRC licensed activities within the Agreement State for which the Agreement State will assume regulatory control and the licensed activities for which the NRC will retain regulatory control must be identified.

The system for identifying licensed activities consists of group and subgroup identifiers. The group identifiers are described under 05.01, 05.02, and 05.03 below. These group identifiers are described in detail in Appendix 1, 2882.

05.01 Group 1. Licenses transferable to an Agreement State which under the terms of a Section 274b Agreement would authorize materials, uses, and places of use no longer subject to regulatory control by the Nuclear Regulatory Commission.

05.02 Group 2. Licenses which upon transfer to an Agreement State under terms of a Section 274b Agreement include authorization for materials, uses, and places of use, some of which would continue under regulatory control of the Nuclear Regulatory Commission.

05.03 Group 3. Licenses which authorize materials, uses, and/or places of use which, under 10 CFR 150.15, cannot be transferred to the Agreement State under terms of a Section 274b Agreement.

2882-06 PROCEDURE

This procedure provides for the identification and transfer or retention of regional license files to an Agreement State. The files applicable to the licensed activities for which the Agreement State assumes regulatory authority, shall include all active inspection files and, where applicable, all active licensing files for licenses for which the regional office has assumed NRC licensing responsibility.

06.01 Existing NRC License Selection

- a. Prepare a listing (computer printout) of all existing NRC licenses within the Agreement State. Existing licenses are those from businesses that are licensed by the Agreement State and those from businesses who operate in the Agreement State but are licensed by another Agreement State or by NRC. Existing licenses include : active licenses, licenses in renewal process, licenses in the application process, and expired licenses that have not been closed out.

The computer codes for these licenses are as follows:

Active Licenses	Status 0
Expired Licenses Not Closed Out	Status 1
Licenses in Renewal Process	Status 2
Licenses in Application Process	Status 3

Generate the listing (computer printout) of existing NRC licenses from the Materials Licensing System (Materials Master File). The key data element for identifying and retrieving the licenses from the computer system are the applicable two-letter State code; for example, PA for Pennsylvania, OH for Ohio, and the Status Codes as identified in 06.01a above.

- b. Certain other information relating to the selected licenses should also be retrieved. As a minimum, the retrieval program should provide the following data elements for printout.

Licensee Name (organizational or individual)

Address

Docket Number

License Number

Status

Priority

Sub-priority (Category)

Expiration Date

Last Inspection Date

- c. Format the computer printout with space available for marking in the group number. The computer printout will suffice as the identifying vehicle.

06.02 Group Identification

- a. Review the license files for each of the licenses selected under 06.01 above and identify by group definition in accordance with that described in Appendix 1. Mark the group and subgroup identifier on the computer printout.
- b. Provide this listing to the Agreement State with a copy to the Director for Office of State and Tribal Programs and to the Agreement State Officer (Regions I, II, III, IV). This list should be provided six months prior to the anticipated effective date of the Agreement.
- c. Licensees affected by transfer of licensing responsibility under a Section 274b Agreement will be notified by letter of such transfer by the NRC Regional Office. The Division of Industrial and Medical Nuclear Safety of the Office of Nuclear Materials Safety and Safeguards provides addressee labels to the NRC Regional Office for this purpose. A copy of the notification will be provided to the Agreement State, the NRC Regional Office, the Office of Nuclear Material Safety and Safeguards, and the Office of State and Tribal Programs.

06.03 Preparation and Transfer of License Files

- a. Group 1 Licenses. Review and consolidate each file. Electronic versions may be maintained. If the Agreement State cannot read the electronic files, hard copies should be provided. Pending actions relating to licensing and inspection should be clearly described. Package and prepare for transfer to the Agreement State.
- b. Group 2 Licenses. Review and consolidate each file. Electronic versions may be maintained. If the Agreement State cannot read the electronic files, hard copies

should be provided. Pending actions relating to licensing and inspection should be documented and fully described. The complete file will be retained and a copy of the file will be prepared for transfer to the Agreement State. |

- c. Group 3 Licenses. The files will be retained. Jurisdiction for these licenses remains with the NRC.
- d. The physical transfer of the files should be made on a date predetermined by agreement between the NRC Regional Office and the Agreement State. The Office of State Programs and Tribal Programs shall be informed of the transfer date. |
- e. The official notification of file transfer to the Agreement State shall include a cautionary statement about proprietary information contained in the license files. The caution shall state that the files may contain information that the NRC considers proprietary, and that the Agreement State may want to review the files before releasing them to the public under the Agreement State guidelines. |

END

LICENSE GROUPS

License files that will be transferred or retained are identified in the following descriptions.

1. Group 1. Licenses which, on the effective date of a Section 274b Agreement, would no longer be subject to regulatory control of the Nuclear Regulatory Commission. This group includes the following types of licenses.
 - a. Licenses issued to persons within the Agreement State with place of use limited to the Agreement State.
 - b. Licenses issued to persons outside the Agreement State with place of use restricted to only the Agreement State.
 - c. Licenses issued to persons within the Agreement State which have included on the license a condition permitting temporary use in other unnamed States provided the NRC is notified before the first date of use.
 - d. Licenses issued to persons within the Agreement State pursuant to 10 CFR 32 authorizing distribution both within and outside of the Agreement State to specific and general licensees, and those authorizing the distribution of products containing exempt concentrations intended for use by the general public (see item 2c below).

2. Group 2. Licenses which include authorizations for possession, use, or places of use which will remain under regulatory control of the Nuclear Regulatory Commission. This group included the following types of licenses.
 - a. Licenses which authorize the use of licensed material in Agreement States and in named locations in non-Agreement States. Named locations include named non-Agreement States and authorized use "anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material." The Commission retains jurisdiction of the use in the states other than Agreement States. This type of license is grouped based on the licensee's address, as follows:
 - (1) Licenses issued to addressees within the Agreement State.
 - (2) Licenses issued to addresses outside of the Agreement State. (For purposes of this subdivision, it is expected that license files will be checked only in the Regional Office making the file transfer to the Agreement State.)
 - b. Licenses which specifically authorize the export or import of licensed material incidental to other uses. The Commission retains jurisdiction over the entire

export or import activities of the license. An Agreement State has jurisdiction over the activities, other than import or export, within its borders.

- c. Licenses which authorize the following: manufacturing, processing, production, packaging, repackaging, distribution, or transferring of equipment, devices, commodities, or other products containing byproduct material intended for use by persons exempt from licensing (consumer-type items for public distribution). The Commission retains jurisdiction over the distribution of such consumer products both within and outside the Agreement State. This jurisdiction includes specifications of the product to determine its suitability for distribution to the public. An NRC region or Agreement State has jurisdiction over the possession and use of materials incidental to the distribution of such items.

- d. A single license which authorizes the possession of byproduct material and/or source material in addition to special nuclear material in quantities sufficient to exceed the definition of Section 150.11 or which, when added to other special nuclear material authorized, causes the total possession limit at any one place of use to exceed the definition. The Commission retains jurisdiction over the special nuclear material per Section 150.11. An Agreement State has jurisdiction over the byproduct and source material.

When the quantity of special nuclear material authorized exceeds the limits of Section 150.11, this group includes licenses which authorize the possession of special nuclear material intimately associated with byproduct and source material, such as in spent fuel elements, or licenses which authorize the possession of special nuclear material resulting from the decay of byproduct material.

- e. Licenses issued to a person, other than an agency of the Federal government, for use of material on property known to be under exclusive Federal jurisdiction; the Commission retains jurisdiction over these licenses.

- f. Licenses issued to a person, other than an agency of the Federal government, within and outside the Agreement State for use of material on property under Federal control within the Agreement State. As an interim measure, while the degree of Federal jurisdiction over the land is being determined, the Commission performs its regulatory functions for the use of the material on property under Federal control. An Agreement State performs its regulatory functions for the use of materials within its borders on property other than that under Federal control.

NOTE: This is a temporary group for use only when the degree of Federal jurisdiction is not clear. When the nature and extent of the Federal jurisdiction has been determined, a license in this group would be placed in another appropriate group.

- g. Licenses which include uses of material clearly under the jurisdiction of the Agreement State, including byproduct or source material used or produced in the operation of a production or utilization facility. As a rule of thumb, all

materials located within the applicable facility therefore, under the jurisdiction of the Commission. All licensable material used outside the site will be considered as not used in the operation of the facility and, therefore, under the jurisdiction of an Agreement State.

The determination of jurisdiction in some cases can be complex. Appendix 2 contains a few examples of jurisdictional division between the Commission and Agreement States.

3. Group 3. Licenses not transferable to the Agreement State and which remain wholly under Nuclear Regulatory Commission jurisdiction. This group includes the following types of licenses.
 - a. Licenses issued to any "Government Agency" as defined in Section 150.3(e).
 - b. Licenses issued to persons within an Agreement State but with the place of use limited to non-Agreement States.
 - c. Licenses which authorize the possession of sufficient special nuclear material to exceed the definition of 10 CFR 150.11 or which, when added to other special nuclear material authorized, will cause the total possession limit at any one place of use to exceed the definition of 10 CFR 150.11.
 - d. Licenses limited to import or export of material to and from the United States.
 - e. Licenses for material used solely within the site and for the operation of a production or utilization facility.
 - f. Licenses for disposal of first-cycle waste resulting from the separation in any production facility of special nuclear material from irradiated reactor fuel if no part of the activity is subject to State jurisdiction.
 - g. Licenses issued to persons within or outside an Agreement State other than instrumentalities of the Federal government, for use only on property under exclusive Federal jurisdiction within an Agreement State.

EXAMPLES OF JURISDICTIONAL DIVISION BETWEEN
THE NRC AND AGREEMENT STATE(S)

1. Reactor startup sources. Possession and use of these sources before startup are handled by the NRC under a Part 30 license. After startup of the reactor, the NRC Part 50 license covers the sources.
2. Industrial radiography. The production or utilization facility licensee may have certain responsibilities with respect to protection of the radiography personnel while in the NRC-licensed facility, but the conduct of radiography operations must be in compliance with the applicable Part 30-type license issued to the industrial radiographer by the NRC or by the Agreement State.
3. Analytical services using radioactive material. As one example, in-place filter testing using radioactive materials by a service company or consultant licensed by the NRC under Part 30 or by an Agreement State and authorized for temporary job sites can fall under State jurisdiction if the end product of the service was information, and the tests did not involve operation of a production or utilization facility.
4. Check sources. Check sources for calibration of offsite equipment are regulated by the Agreement State.

Internal check sources for calibration or check of in-plant monitors which directly affect the operation of the reactor are covered by the NRC.

These are a few illustrative examples. The determination of jurisdiction can be complex and may need to be resolved on a case-by-case basis. In the separation of files for transfer to a new Agreement State, questions regarding jurisdiction or the division of jurisdiction between the NRC and the Agreement State shall be resolved before transfer of responsibility for the license.