[7590-01-P]

NUCLEAR REGULATORY COMMISSION

State of Utah: NRC Staff Draft Assessment of a Proposed Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: First Notice of a Proposed Amendment to the Agreement with the State of Utah; Request for Comment.

SUMMARY: By letter dated January 2, 2003, Governor Michael O. Leavitt of Utah requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an amendment to the Agreement with Utah (the Agreement) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed amendment to the Agreement, the Commission would relinquish, and Utah would assume, an additional portion of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed amendment to the Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the portion of the regulatory program Utah would assume. Comments are requested on the proposed amendment to the Agreement and the staff's draft assessment, which finds the program to be adequate to protect public health and safety and compatible with NRC's program for regulation of 11e.(2) byproduct material.

The proposed amendment to the Agreement would release (exempt) persons who possess or use certain radioactive materials in Utah from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby

given that the pertinent exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires (insert date 30 days after date of publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following phrase [Utah Amendment] in the subject line of your comments. Comments will be made available to the public in their entirety. Personal information will not be removed from your comments.

Mail comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001.

E-mail comments to: NRCREP@nrc.gov.

Fax comments to: Chief, Rules and Directives Branch, at (301) 415-5144.

Publicly available documents related to this notice, including public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at 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 Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

Documents available in ADAMS include: the request for an amended Agreement by the Governor of Utah including all information and documentation submitted in support of the request (ML030280380); NRC comments on the request (ML031810623), Utah's response to NRC comments (ML032060090); Utah's additional clarification (ML033640565), and the full text of the NRC Staff Draft Assessment **(INSERT ML# prior to publication)**.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2819 or e-mail DMS4@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 16,850 material licenses, while NRC regulates approximately 4550 licenses. NRC periodically reviews the performance of the Agreement States to assure

compliance with the provisions of Section 274. Under the proposed amendment to the Agreement, four NRC licenses will transfer to Utah.

Section 274e requires that the terms of the proposed amendment to the Agreement be published in the Federal Register for public comment once each week for four consecutive weeks. This first Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials[1] and activities that involve use of the materials.

In a letter dated January 2, 2003, Governor Leavitt certified that the State of Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within Utah for the materials and activities specified in the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. The radioactive materials and activities (which together are usually referred to as the “categories of materials") which the State of Utah requests authority over are: the possession and use of byproduct material as defined in Section 11e.(2) of the Act and the facilities that generate such material (uranium mill tailings and

[1]The radioactive materials are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

uranium mills). Included with the letter was the text of the proposed amendment to the Agreement, which has been edited and is shown in Appendix A to this Notice.

(b) The proposed amendment to the Agreement modifies the articles of the Agreement that:

--Specify the materials and activities over which authority is transferred;
--Specify the activities over which the Commission will retain regulatory authority; and
--Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the amendment to the Agreement, with the effective date, will be published after the amendment to the Agreement is approved by the Commission and signed by the Chairman of the Commission and the Governor of Utah.

(c) Utah currently regulates all radioactive materials covered under the Act, except for conducting sealed source and device evaluations, and the possession and use of 11e.(2) byproduct material, which would be assumed by Utah under the proposed amendment to their Agreement. Section 19-3-113 of the Utah code provides the authority for the Governor to enter into an Agreement with the Commission. Section 19-3-113 also contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Utah licenses until the licenses expire or are replaced by State issued licenses. The regulatory program including 11e.(2) byproduct materials is authorized by law in Section 19-3-104.

(d) The NRC staff draft assessment finds that the Utah program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of 11e.(2) byproduct material and the facilities that generate such material.

II. Summary of the NRC Staff Draft Assessment of the Utah Program for the Control of 11e.(2) Byproduct Materials

The NRC staff has examined Utah's request for an amendment to the Agreement with respect to the ability of the Utah radiation control program to regulate 11e.(2) byproduct material. The examination was based on 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," referred to herein as the "NRC criteria" (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) Organization and Personnel. The 11e.(2) byproduct material program will be located within the existing Division of Radiation Control (Program) of the Utah Department of Environmental Quality. The Program will be responsible for all regulatory activities related to the proposed amendment to the Agreement.

The Program performed an analysis of the expected Program workload under the proposed amendment to the Agreement and determined that a level of three technical and one administrative staff would be needed to implement the 11e.(2) byproduct

material authority. The distribution of the qualifications of the individual technical staff members will be balanced with the technical expertise needed for 11e.(2) byproduct material (i.e., health physics, hydrology, engineering). The Program currently has and intends to initially use existing qualified staff to conduct the 11e.(2) byproduct materials activities. At least two staff are qualified in each of the three technical areas identified in the Criteria: health physics, engineering, and hydrology.

The educational requirements for the 11e.(2) byproduct material program staff members are specified in the Utah State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection.

The Program also plans to hire three new staff into the program to supplement the existing staff (two professional/technical and one administrative). New staff hired into the Program will be qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

Based on the NRC staff review of the State's need analysis, current staff qualifications, and the current staff assignments for the 11e.(2) byproduct material program, the NRC staff concludes that Utah will have an adequate number of qualified staff assigned to

regulate the 11e.(2) byproduct material workload of the Program under the terms of the amendment to the Agreement.

(b) Legislation and Regulations. The Utah Department of Environmental Quality (Department) is designated by law to be the implementing agency. The law establishes a Radiation Control Board (Board) that has the authority to issue regulations and has delegated the authority to the Executive Secretary the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. The Executive Secretary is the director of the Division of Radiation Control in the Department. Licensees are required to provide access to inspectors. The law requires the Board to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent. Utah has adopted R313-24 Utah Administrative Code that incorporates NRC uranium milling regulations by reference, with a few exceptions, and other regulatory changes needed for the 11e.(2) byproduct material program. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff. The final regulations were sent to NRC for review. The NRC staff review verified that, with the one exception of the alternative groundwater standards, the Utah rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The alternative groundwater standards were addressed in a separate Commission action (see 68 FR 51516; August 27, 2003 and 68 FR 60885; October 24, 2003) and will be resolved prior to the Commission's final approval of an amendment to the Agreement with Utah. The NRC staff also concludes that Utah will not attempt to enforce regulatory matters reserved to the Commission.

(c) Evaluation of License Applications. Utah has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use 11e.(2) byproduct material. Utah will use its general licensing procedures, along with the additional requirements in R313-24 specific to 11e.(2) byproduct material. Utah will use the NRC regulatory guides as guidance in conducting its licensing reviews.

(d) Inspections and Enforcement. The Utah radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Utah Revised Statutes, procedures for the enforcement of regulatory requirements.

(e) Regulatory Administration. The Utah Department of Environmental Quality is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Utah law prescribes standards of ethical conduct for State employees.

(f) Cooperation with Other Agencies. Utah law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Utah. The law provides that these former NRC licenses will expire either 90 days after receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. Utah also provides for “timely

renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 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 Subsection 274o, and in all other respects compatible with the Commission'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.

On the basis of its draft assessment, the NRC staff concludes that the State of Utah meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program

of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

NRC will continue the formal processing of the proposed amendment to the Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated at Rockville, Maryland, this _____ day of _____, 2003.

For the Nuclear Regulatory Commission.

_____, Director
Office of State and Tribal Programs

APPENDIX A

AMENDMENT TO AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF UTAH FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT, AS AMENDED

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984) with the State of Utah under Section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8 and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

WHEREAS, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended) pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

WHEREAS, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for 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; and

WHEREAS, the Governor of the State of Utah is authorized under Utah Code Annotated 19-3-113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

WHEREAS, the Governor of the State of Utah has requested this amendment in accordance with Section 274 of the Act by certifying on January 2, 2003 that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in Section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

WHEREAS, the Commission found on [insert date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in Section 11e.(2) and is adequate to protect public health and safety; and

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

WHEREAS, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

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

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as C through E. Paragraph B will read as follows:

"B. Byproduct materials as defined in Section 11e.(2) of the Act;"

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

"E. 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."

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the

State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct

material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States."

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

"ARTICLE IX

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

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site."

This amendment shall become effective on [insert date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done at Rockville, Maryland, in triplicate, this [day] day of [month, year]

FOR THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

_____
[insert Chairman's name], Chairman

Done at Salt Lake City, Utah, in triplicate, this [day] day of [month, year]

FOR THE STATE OF UTAH

_____
Olene S. Walker, Governor