

October 23, 2006

Leslie Foldesi, Director
Division of Radiological Health
Department of Health
P.O. Box 2448
Richmond, VA 23218

Dear Mr. Foldesi:

We have reviewed Virginia's enabling legislation contained in the Code of Virginia, Sections 32.1-227 through 32.1-238, received by our office on August 28, 2006. The legislation was reviewed by comparison to the criteria in Section 4.1.1 of the Handbook in the Office of State and Tribal Programs Procedure SA-700, "*Processing an Agreement.*" We discussed our review of the legislation with you on September 21, 2006.

We appreciate the opportunity to perform an early review of your legislation and offer the following 10 comments:

1. The Virginia legislation does not directly establish a radioactive materials program or define its structure. The legislation does define the authorizations of the Board; however, the legislation does not expressly designate the Board as the radiation control agency. Please see SA-700, Section 4.1.1.1, Information Needed paragraph (a).
2. Although the Virginia legislation does authorize the program to issue licenses, the Virginia legislation does not clearly authorize the program to:
 - impose additional license requirements;
 - give exemption from the licensure requirements;
 - recognize the licenses of other jurisdictions; or
 - make it unlawful to acquire, possess, store, use, transfer, or dispose of materials without a valid license, or to violate the conditions of a license.

Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph (b)(1), (2), (3), (4), and (5).

3. Although the Virginia legislation does authorize the program to adopt regulations, the Virginia legislation does not:
 - specify the procedures and requirements for adoption of regulations, including public participation; or
 - allow the program to impose requirements in the form of other generic legally binding requirements, such as orders.

Please see SA-700 Handbook, Section 4.1.1.1, Information Needed, paragraph (c)(1) and (2).

4. The Virginia legislation does not expressly authorize the program to require compliance with regulatory requirements by both licensees and unlicensed individuals. Please see SA-700 Handbook, Section 4.1.1.1, paragraph (e).
5. The definitions of "Person" and "Source Material" in the Virginia legislation and those in the Virginia regulations are not identical. These two definitions should be identically listed in both the Virginia regulations and legislation.
6. Although the Virginia legislation does not apply to nuclear reactors, the Virginia legislation does not explicitly exclude other materials or activities reserved to the NRC under Section 274c of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 150.

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (b).

7. Although the Virginia legislation does provide for recognition of licenses transferred from NRC to the Commonwealth under the Agreement, the Virginia legislation does not authorize the reciprocal recognition of specific licenses issued by NRC or other Agreement States.

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (c).

8. Although the Virginia legislation does provide for inspections of x-ray machines and facilities that provide mammography services, the Virginia legislation does not contain a general authorization to conduct inspections of licensee operations to ensure compliance with regulatory requirements. The Virginia legislation also does not authorize inspections of unlicensed facilities to assess the risk resulting from accidents or environmental releases of materials.

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (g).

9. Although the Virginia legislation does provide for imposition of civil penalties, the Virginia legislation does not provide general authority to take prompt enforcement action and does not authorize a variety of legal sanctions, including suspension of licenses and impoundment of materials. In cases of imminent threat to public health and safety, the law should authorize immediate suspension without prior hearing.

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (h).

10. Although the Virginia legislation does provide for the imposition of civil penalties, the Virginia legislation does not:
- authorize suspension or revocation of a license for repeated or continued noncompliance;
 - authorize the program to seek injunctive relief; or
 - authorize the program to refer licensees for criminal prosecution.

Please see SA-700 Handbook, Section 4.1.1.2, Evaluation Criteria, paragraph (i).

We recommend that you address the 10 comments above. If the comments can be addressed through other statutes, please provide this information in your draft request for an Agreement. If you would like us to review this information prior to the submittal of your draft request, please let us know. In addition, to assist the Commonwealth in responding to these comments, the 1983 Council of State Governments generic model of a Radiation Control Act in Suggested State Legislation, Volume 42, can be found at <http://www.crcpd.org/PDF/RadControl.PDF>.

The Commonwealth of Virginia may also resolve these comments through interpretation of Commonwealth law. NRC will accept interpretations provided by the Commonwealth Attorney General, or other attorneys designated as a legal advisor to the radioactive materials program.

If you have any questions regarding the comments, please contact me, or Shawn Rochelle Smith at 301-415-2620 or by e-mail at srs3@nrc.gov.

Sincerely,

IRA By J.R. Schlueter

Janet R. Schlueter, Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

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Janet R. Schlueter, Director
 Division of Materials Safety and State Agreements
 Office of Federal and State Materials and
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***See previous concurrence.**

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