U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 5.8	PROPOSED SECTION 274B AGREEMENTS WITH STATES DT-XX-XX
Volume 5	Governmental Relations and Public Affairs
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Issuing Office:	Agreement State Programs Branch Office of Federal and State Materials and Environmental Management Programs
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EXECUTIVE SUMMARY

Directive and Handbook 5.8 are being revised to reflect organizational changes and align policies, requirements, and procedures. This revision recognizes the Office of Federal and State Materials and Environmental Management Programs and the changes in organizational responsibility for the Office of Nuclear Material Safety and Safeguards. Specifically, this revision describes changes in organizational responsibilities for discrete sources of radium-226, accelerator-produced radioactive materials, and discrete sources of radioactive material as required by the Energy Policy Act of 2005.

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to implement procedures for the establishment of new agreements with individual States pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Section 274b agreements) and the Energy Policy Act of 2005.

II. OBJECTIVE

To establish a system for an orderly transition in the discontinuance of certain regulatory authority by NRC with assumption thereof by the State through a standard agreement.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Commission

1. Approves requests from a Governor to enter into an agreement under Section 274 of the Atomic Energy Act of 1954, as amended.
2. Approves policy matters related to NRC's Agreement States Program.

B. Executive Director for Operations (EDO)

Provides management direction and oversight for the activities described herein.

C. Director, Office of Federal and State Materials and Environmental Management Programs (FSME)

1. Coordinates the review and action on a State's request for a Section 274b agreement or amendment to an agreement with the cognizant regional administrator and office directors, including the planning meetings with the State to discuss issues related to the request.
2. Identifies an NRC contact, prepares correspondence to the State, as appropriate, and provides a schedule for accomplishing staff work on the agreement request.
3. Reviews a State's request for a Section 274b agreement or amendment to an agreement to determine the adequacy and compatibility of the State's program.
4. Prepares a Commission paper that includes the staff assessment of the State's request and a proposed *Federal Register* notice, publishing this information for public comment for four consecutive weeks according to the Atomic Energy Act.
5. Prepares a Commission paper for final approval of the State's request by the Commission. The paper is coordinated with the Office of the General Counsel (OGC) and affected offices and provides an analysis and response to public comments.

6. Prepares the approved agreement for the signature of the Chairman and the Governor. Arranges all post-signing coordination for the transfer of regulatory authority under the effective agreement.

7. Coordinates the transfer of license files and other appropriate material for sealed source and devices registrations and site decommissioning management plan sites when agreement is effective.

D. Office of the General Counsel (OGC)

1. Consults with the Director of FSME concerning the legality of the proposed agreement.

2. Appoints principal working-level contacts for legal review of the proposed agreement.

3. Reviews, comments, and concurs, if appropriate, on the legality of the proposed agreement and the final Commission paper.

E. Director, Office of Nuclear Security and Incident Response (NSIR)

1. Consults with the Director of FSME concerning the proposed agreement.

2. Appoints principal working-level contacts for review of the proposed agreement.

3. Reviews and comments for concurrence, if appropriate, on the proposed agreement and the final Commission paper.

F. Office Directors and Regional Administrators

1. Consult with the Director of FSME concerning the proposed agreement.

2. Appoint principal working-level contacts for review of the proposed agreement.

3. Assist in the coordination of the review and action on State requests for Section 274b agreements or amendments to agreements, including the planning of meetings with the State to discuss issues related to the request.

4. Review and comment for concurrence, as applicable, on the proposed agreement and the final Commission paper.

5. Before the agreement is signed, coordinate with the State on the licenses and contaminated or potentially contaminated sites and decommissioning records to be transferred when the agreement is effective.

6. Provide the opportunity for license reviewers and inspectors from the State seeking an agreement to review regional licensing casework in progress and observe NRC inspections at the facilities of licensees in that State.

7. When the agreement is effective, coordinate the transfer of licenses, license files, and other appropriate material, including meeting with representatives of the applicable State to describe and explain licenses and files that will be transferred to the State.
8. Ensure, to the extent practicable, that licensing and inspection backlogs do not exist for licensees in the State seeking an agreement.

IV. APPLICABILITY

The policy and guidance in this directive and handbook apply to all NRC employees who process a request for a Section 274b agreement.

V. HANDBOOK

Handbook 5.8 contains an overview of the process, guidelines, and a copy of a standard agreement.

VI. REFERENCES

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Energy Policy Act of 2005, Pub. L. 109-58.

Federal Register Documents—

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement (46 FR 7540, January 23, 1981, as amended by policy statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).

Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs (62 FR 46517-46525), September 3, 1997.

Evaluation of Agreement State Radiation Control Programs (60 FR 54734, October 25, 1995).

NRC Documents

Management Directives—

5.6, “Integrated Materials Performance Evaluation Program (IMPEP).”

5.9, “Adequacy and Compatibility of Agreement State Programs.”

Office of Federal and State Materials and Environmental Management Programs Procedure SA-700, “Processing an Agreement.”

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I. PROPOSED SECTION 274B AGREEMENTS WITH STATES

A. Overview

1. NRC is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, to enter into agreements with States—

   (a) Upon certification by the Governor that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed agreement and that the State desires to assume regulatory responsibility for such material.

   (b) After a finding by the Commission that the State program is in accordance with the requirements of Subsection o of Section 274 and in all other respects is compatible with the Commission's program for the regulation of such materials, and is adequate to protect public health and safety with respect to the materials covered by the proposed agreement.

2. This management directive and handbook supplement the "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement" (46 FR 7540, January 23, 1981, as amended by policy statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983) and the Office of Federal and State Materials and Environmental Management Programs Procedure SA-700, "Processing an Agreement." These documents should be used in conjunction with this handbook.

B. Process Sequence for New Agreements

The typical sequence for NRC in processing a State's request for an agreement is summarized below:

1. Receive a letter of intent from the Governor of the State interested in an agreement with NRC.

2. Provide guidance to the State on the necessary elements of an Agreement State program, including draft legislation, regulations, and program description.

3. Receive and review the request for an agreement from the Governor, the program description, and necessary program elements.

4. Transmit and resolve any outstanding items with the State regarding the proposed agreement request.

5. Prepare a Commission paper on the proposed agreement request, including staff assessment and a *Federal Register* notice with the proposed agreement for public comment.

6. Publish a *Federal Register* notice with the proposed agreement for public comment for 4 consecutive weeks according to the Atomic Energy Act.

7. Prepare a Commission paper that analyzes and responds to public comments and provides staff recommendations on the agreement for final approval by the Commission.
8. Prepare the approved agreement for the signature of the Chairman and the Governor upon Commission approval and arrange signing ceremony, if necessary.
9. Arrange all postsigning coordination for the orderly transfer of regulatory authority under the effective agreement.

C. Standard Agreement

The standard agreement describes the categories of materials to be regulated by the State and the effective date of the agreement, as shown in the exhibit to this handbook.

EXHIBIT

Exhibit Standard Agreement Under Section 274b

AN AGREEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

AND

THE STATE/COMMONWEALTH OF [insert name of State]

FOR THE

DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY

AND

RESPONSIBILITY WITHIN THE STATE/COMMONWEALTH PURSUANT TO

SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. (hereinafter referred to as 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 State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(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 State/Commonwealth of [insert name] is authorized under [cite enabling statute] to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State/Commonwealth of [insert name] certified on [date], that the State/Commonwealth of [insert name] (hereinafter referred to as the State/Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State/Commonwealth covered by this Agreement, and that the State/Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State/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 State/Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the State/Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that

State/Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State/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 Atomic Energy Act of 1954, as amended;

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

ARTICLE I[1]

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 State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

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. Byproduct materials as defined in Section 11e.(3) of the Act;

D. Byproduct materials as defined in Section 11e.(4) of the Act;

E. Source materials;

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

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

H. 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.

ARTICLE II

A. 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;

[1] If the State/Commonwealth chooses not to regulate all categories of material listed in Article I, those categories where NRC will retain authority should be listed in Article II, A.

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 material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so 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.[2]

B.[3] Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State/Commonwealth license for such byproduct material, or for any activity that results 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/Commonwealth at the option of the State/Commonwealth (provided such option is exercised prior to termination of the license);

[2] Include only if the State is not authorized to conduct sealed source and device reviews for purposes of registration for distribution.

[3] Article ll.B. is included in the agreement only if the State is authorized to regulate 11e.(2) byproduct material.

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State/Commonwealth pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, 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 a State/Commonwealth;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State/Commonwealth, 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.

ARTICLE III[4]

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the State/Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs [those activities not included in the agreement], whereby the State/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.

[4] Delete this Article and renumber the remaining articles if the State/Commonwealth assumes authority over all categories of materials in Article II.

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

The State/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 State/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 State/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 State/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 State/Commonwealth, or upon request of the Governor of the State/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 State/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 State/Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the State/Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a State/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[5]

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

A. The total amount of funds the State/Commonwealth collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State/Commonwealth license for such material or any activity which results in the production of such 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.

ARTICLE X

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 [City, State] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION

_____, Chairman

FOR THE STATE/COMMONWEALTH OF _____

_____, Governor

[5] Use Article IX only if the State is authorized to regulate 11e.(2) byproduct material.