



**Office of Nuclear Material Safety and Safeguards**  
**Agreement Office of Federal and State Materials and**  
**Environmental Management Programs (FSME) State**  
**Procedure Approval**

***Processing an Agreement - SA-700***

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Issue Date: ~~July 19, 2007~~

Review Date: ~~July 19, 2010~~

Laura A. Dudes, Director ~~Janet R. Schlueter~~

Signature: \_\_\_\_\_

Division of Material Safety,  
State, Tribal, and  
Rulemaking Programs  
Acting Director, MSSA

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

~~\_\_\_\_\_ Laura A. Dudes Janet R. Schlueter \_\_\_\_\_ Date: 7/19/2007~~

A. Duncan White, Branch Chief  
Agreement State Program Branch  
Division of Material Safety,  
State, Tribal, and  
Rulemaking Programs

Signature: \_\_\_\_\_  
Date: ~~7/17/2007~~  
Date: \_\_\_\_\_

Torre Taylor ~~William R. Rautzen Torre Taylor~~

Signature: \_\_\_\_\_


Procedure Contact  
Agreement State Program Branch  
Division of Material Safety,  
State, Tribal, and  
Rulemaking Programs

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

~~\_\_\_\_\_ William R. Rautzen Torre Taylor \_\_\_\_\_ Date: 7/17/2007~~

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**NOTE**

**Any changes to the procedure will be the responsibility of the Procedure Contact. Copies of NMSS procedures will be available through the NRC website.**

~~These Procedures were formerly issued by the Office of State and Tribal Programs (STP). Any changes to the procedure will be the responsibility of the FSME Procedure Contact as of October 1, 2006. Copies of FSME procedures will be available through the NRC website.~~

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**I. INTRODUCTION**

- A. Section 274 of the Atomic Energy Act of 1954, as amended, (AEA) ~~Act~~ provides a statutory basis under which the NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials; source materials; and certain quantities of special nuclear materials. ~~The Atomic Energy Act of 1954, as amended, (Act) authorizes the U.S. Nuclear Regulatory Commission (NRC) to enter into Agreements that transfer regulatory providing for discontinuance of authority over certain radioactive materials to the States and the assumption of this regulatory authority by the States.~~ The Governor of a State initiates this process ~~the transfer~~ by formally requesting an Agreement. The mechanism for the transfer of the NRC's authority to a State is an Agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with section 274b of the AEA ~~Act~~.
- B. This procedure describes the methods and guidelines for reviewing the request for an Agreement. It also provides guidance to:
  - 1. NRC staff on the formal procedural steps for responding to a Governor's request for an Agreement~~;~~;
  - 2. NRC staff on the criteria for evaluating a State's ~~request; proposed Agreement materials program,~~ and
  - 3. State staff on the information to include in a request for an Agreement.

**Comment [A1]:** This paragraph was revised to be a little more consistent with public information on the website. Based on a comment

C. As used in this procedure, the term Agreement State <sup>1</sup> refers to either a State<sup>2</sup> or


**Comment [A2]:** This footnote is being moved to the word "State" – in order to show the change, the text has to be struck out and the footnote copied. The footnote number will be correct in the final, clean version of the procedure.

<sup>1</sup>~~Section 274 n. of the Atomic Energy Act (Act) The Act considers the U.S. Territories and the District of Columbia to be States for the purpose of entering into an Agreement.~~

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a Commonwealth. However, NRC staff should ~~take care to~~ use the ~~proper~~ term ~~for the particular State or Commonwealth that is requesting the Agreement~~ in the Agreement, *Federal Register* (~~FR~~)-Notices (*FRN*), and other official records.

**II. OBJECTIVE**

- A. ~~Ensure Assure~~ that each new Agreement is consistent with the provisions of the ~~AEAAet~~, Commission policy, NRC Management Directives, and other statutory, regulatory or policy requirements;
- B. Create a ~~predictable and stable consistent~~ regulatory review process to reduce uncertainties that any prospective Agreement State ~~maywould~~ encounter;

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<sup>2</sup>Section 274.n. of the Atomic Energy Act (AEAAet) considers the U.S. Territories and the District of Columbia to be States for the purpose of entering into an Agreement.

- C. Provide for the effective, efficient, and timely review of the request by a State for an Agreement, or for an amendment to an existing Agreement; and
- D. Provide for an orderly transition in the discontinuance of regulatory authority by the NRC and assumption thereof by the State, as well as support the necessary budgetary planning process that accompanies the transition.

**III. BACKGROUND**

A. The **AEAAct** and Agreements

Section 274 of the **AEAAct** allows the Commission and a State to enter into an Agreement under certain conditions. Under the Agreement, the Commission discontinues regulatory authority over the specified categories of materials. The State concurrently assumes regulatory authority for those materials. A general timeline for entering into an Agreement can be found in **Appendix C of the Handbook page C-1 of the Handbook** for Processing an Agreement.

Categories of materials that the NRC may transfer are: (a) byproduct materials as defined in Section 11e.(1) through Section 11e.(4) of the **AEAAct**; (b) source materials as defined by Section 11z. of the **AEAAct**; (c) special nuclear materials (as defined in Section 11aa. of the **AEAAct**) in quantities not sufficient to form a critical mass (as defined in 10 CFR 150.11); (d) the regulation of the land disposal of byproduct, source, or special nuclear **waste materials wastes** received from other persons; and (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 the regulations or orders of the Commission. The State may choose to assume regulatory authority over any ~~combination of the above~~ the above categories. **A State must assume authority over the entire category of material for which it is requesting authority under the Agreement. A State may not choose to regulate only certain types of activities within a category. A State must also have authority over all licensees within each category of material over which the State assumes authority.**

Before the Commission may approve the Agreement, the State must have a program for the control of radiation hazards. The program must be adequate to protect public health and safety with respect to the categories of materials specified in the Agreement. **For the purpose of this procedure, "public health and safety" includes security/physical protection of agreement material." Throughout this Procedure and Handbook, whenever public health and safety is discussed, it is also understood that security/physical protection of agreement material is a part of public health and safety.** It must also be compatible with the Commission's program for the regulation of the materials. To distinguish this

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program from other radiation control activities of the State, ~~we call it the program~~ is referred to as the Agreement materials program. When a State expresses an interest in entering into an Agreement with NRC, NRC staff will often meet with the State management to discuss an overview of Agreements, the legislation and regulations needed, the programs the State needs to establish, and the timeline. A more detailed discussion is held after the NRC receives a Letter of Intent – this is discussed below in Section V, "Guidance."

The Governor must certify that the State has the required program and desires to assume ~~the~~ regulatory authority ~~over the requested categories of materials~~. A comprehensive description of the Agreement materials program should accompany the certification. The certification and description together make up the request for an Agreement. The information in the description must ~~be of sufficient detail for enable~~ the Commission to ~~determine that find~~ the State Agreement materials program is adequate and compatible ~~with the NRC's regulatory program~~.

B. The Agreement Materials Program

An Agreement materials program has two basic components. The first component is a set of laws and regulations that provides the **Agreement materials** program's framework. In accordance with Commission policy, the term "regulations" may include other forms of generic legally binding requirements. These ~~legally binding alternate~~ requirements may include license conditions, ~~or~~ orders, or any other acceptable ~~method alternative~~ as authorized by State law.

The second component is an effective organizational and administrative structure to execute and enforce the laws and regulations. The administrative structure includes implementing and operating procedures, and guidance for licensees and the **State** program staff.

The organizational structure may be a single State agency, a part of an agency, or portions of two or more agencies. In this procedure, the term "Agreement materials program" includes all State organizational units with regulatory responsibility over ~~the~~ materials specified in the Agreement.

C. NRC Staff Actions

The NRC staff evaluates the State's Agreement materials program as described in the request for an Agreement. Simultaneously, it prepares a written assessment of the **Agreement materials** program. The assessment provides the basis for a finding by the Commission that the **Agreement materials** program is adequate and compatible. The assessment should show that the **Agreement materials** program satisfies the Commission policy statement *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and*

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*Assumption Thereof by States Through Agreement*, (46 FR 7540; January 23, 1981), as amended on July 16, 1981 (46 FR 36969), and July 21, 1983 (48 FR 33376)). ~~This We refer to this~~ Commission policy statement is hereafter referred to as the "criteria policy statement."

The assessment should also give the NRC confidence that if the State implements the Agreement materials program as presented, a review of the Agreement materials program pursuant to NRC Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program* (IMPEP), will find the State Agreement materials program satisfactory for all applicable indicators.

#### IV. ROLES AND RESPONSIBILITIES<sup>3</sup>

- A. The Director, Office of ~~Federal and State Materials and Environmental Management Programs~~ (FSMENuclear Material Safety and Safeguards<sup>4</sup> (NMSS), is responsible for the Agency's review of a request from a State for an Agreement. The Director determines when the request satisfies the criteria policy statement; and recommends Commission approval of the request.
- B. The ~~Director of the Division of Materials Safety and State Agreements (MSSA)~~

<sup>3</sup> ~~As of October 1, 2006, NRC reorganized its nuclear materials and Agreement State programs into two new program offices. The newly created Office of Federal and State Materials and Environmental Management Programs (FSME) is comprised of the former Office of State and Tribal Programs and two technical divisions from the Office of Nuclear Material Safety and Safeguards.~~

<sup>4-4</sup> Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with NMSS on October 6, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. In the interim, current procedures are in effect and will be referenced as State Procedures until such time as they are reviewed and revised to include the official office name. All procedures may be found on the NMSS external Web site: [www.nrc.gov](http://www.nrc.gov) > About NRC > Organization and Functions > Office of Nuclear Material Safety and Safeguards. Under Related Information, go to the "Agreement State Program." The State Procedures are under "Resources and Tools," and then "NMSS Procedures." ~~Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with NMSS on October 6, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. In the interim, current procedures will still be referenced as FSME State Procedures until such time as they are reviewed and revised to include the official office name. All procedures may be found on the NMSS external website under "Resources and Tools," and then "NMSS Procedures."~~

~~On October 6, 2014, the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with the Office of Nuclear Material Safety and Safeguards. Procedures issued under FSME are still in effect as an NMSS procedure. When those procedures are next revised, the name will be changed to an NMSS procedure.~~

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~~and the~~ Branch Chief of the Agreement States Program ~~Branch, Branch~~ (ASPB) assigns a Project Manager (PM) for the review of the Agreement request. The PM is the primary NRC staff contact for the State during the review. Finally, the PM is the review team leader and should ~~be knowledgeable of, the IMPEP program review process and have substantial experience with, this process.~~ ~~the IMPEP review process.~~ ~~qualify as an IMPEP team leader~~

- C. The review team is responsible for conducting the staff evaluation of the request according to this procedure. A team normally consists of the PM, the assigned staff contacts from other NRC offices ~~including the Office of the General Counsel (OGC), Office of Nuclear Security and Incident Response, and the affected Region. Other NRC offices should be~~ ~~should be represented if necessary.~~<sup>5</sup> ~~Other NMSSFSME staff may also be represented, such as NMSSFSME staff from decommissioning or uranium recovery activities. and Other FSME staff may be included as well as assigned.~~ The principal reviewers for licensing, inspection, staffing, and incidents and allegations should meet the IMPEP qualification requirements (NRC MD 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*).
- D. The Regional State Agreements Officer (RSAO) is usually the lead NRC contact for a State before it submits a letter of intent. After the State submits a letter of intent, the PM assumes lead responsibility. However, the RSAO ~~usually~~ continues to coordinate contacts between the State and the Region licensing and inspection staffs. ~~The Regional State Liaison Officer (RSLO) may serve as a backup to the RSAO.~~ The RSAO ~~and RSLO~~ should keep the PM informed of these contacts.
- E. The Region and ~~NMSS FSME~~ are responsible for transferring ~~the~~ NRC license files to the State (NRC MD 3.53, *NRC Records Management Program*). The PM should be kept informed of these activities.

## V. GUIDANCE

For detailed guidance on reviewing the request, including scheduling and documentation requirements, see the *Handbook for Processing an Agreement* (Handbook ~~Appendix C~~). ~~Appendix D to the Handbook Appendix C~~ contains ~~examples~~ ~~samples~~ of letters and documents ~~based on the work on recent a previous~~ Agreement request reviews. Below is an outline of each step in the process with a brief description. Cross-references to the Handbook and ~~to~~ Appendix D for examples are included in brackets.

<sup>5</sup> ~~Office of General Counsel, Office of Nuclear Security and Incident Response, the affected Region, and other NRC offices if necessary.~~

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A. Governor's Letter of Intent [Handbook, Section 3.3 and Appendix D, Item A]

The Governor should send a letter to the Chairman declaring the State's intent to seek an Agreement. The letter should ~~indicate~~ include a commitment of State resources to seeking an Agreement. Based on this commitment, NRC plans for the review and commits its resources to working with the State on completion of an Agreement.

B. ~~Initial~~ Meeting with State after Receipt of Letter of Intent

Upon receipt of the Governor's Letter of Intent, the NRC ~~staff~~ Project Manager (PM) should schedule an initial meeting with the State, ~~the NRC project manager,~~ the Branch Chief of ~~the Agreement State Programs Branch (ASPB),~~ and the Regional State Agreement Officer (RSAO). The purpose of this meeting is to discuss in more detail the process for becoming an Agreement State, including legislation, regulations, procedures, and the information to include in the request. Staff should also discuss the time period involved in becoming an Agreement State.

B-C. Preparing a Request for an Agreement

When preparing a request for an Agreement, the State should consider the guidance in this procedure and ~~the Handbook.~~ The Agreement materials program description should address the program elements listed in ~~Section 4.0 of the Handbook, Section 4.0.~~ For each program element, the State should provide information for each category of materials requested in the Agreement.

The State can also discuss the proposed Agreement materials program with other Agreement States for suggestions and recommendations. The State may find it helpful to use other Agreement materials programs' procedures as a template for establishing its own procedures.

C-D. Draft Request for an Agreement [(Handbook, Section 3.4)]

1. The ~~State~~ Radiation Control Program Director, or equivalent Governor appointed representative, ~~Director of the State Agreement materials program (State (hereafter referred to as the Program Director)-program program Director)~~ should submit a draft of the State's request for an Agreement. The draft request should contain a draft letter of certification, and ~~and a~~ description of the Agreement materials program ~~description information~~ for all applicable elements of the Agreement materials program. It should also contain ~~the~~ draft text for the proposed Agreement (~~see~~ NRC MD 5.8, *Proposed Section 274b Agreements ~~With~~with States*).

2. The ~~State~~ Program Director should ~~alert~~ notify the PM or the Branch Chief of

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~~the~~ ASPB, ~~Division Director of MSSA~~, at least two months before submitting the draft. The Director of ~~FSME-NMSS~~ should then ask the Offices (~~discussed~~discussed ~~identified~~ in Section IV.C of this procedure) to assign staff level contacts for the review team.

3. ~~3.~~—The team reviews the draft request for completeness. ~~To be complete, the~~The description of the Agreement materials program ~~description information~~ must address all applicable program elements. It must also contain sufficient information to permit staff to conduct a detailed review of the application. Printed and photocopied documents must be legible. Information in electronic form must be readable by the agency computer resources. ~~The State should not submit any information that is not publicly~~ available, including security related information.
4. ~~4.~~—The team prepares a letter to the ~~State P~~program Director to document the results of the completeness review [~~sample in~~ Handbook, Appendix D, ~~Item CG~~]. The Director of ~~NMSS~~FSME signs the letter following Office concurrence.
5. ~~5.~~—The PM, RSAO, ~~Branch Chief of ASPB, Division Director of (DMSSA) or designee~~, and the ~~State P~~program Director, as well as - any designated State contact, should schedule regular telephone conference calls on the progress of the review [~~H~~handbook, Section 3.4.4]. Review team members and other NRC staff may participate. Meetings should supplement the calls as needed.
6. ~~6.~~—The State should address the Agency's comments by making changes in the formal request [~~H~~Handbook, Section 3.5]. The ~~State P~~program Director should not submit a second draft, or changes to the draft, unless coordinated with the ~~Branch Chief of the ASPB, Division Director of MSSA~~. When the changes to the formal request are completed, the Governor should sign and submit the formal request to the Chairman.

D.E. Formal Request for an Agreement [~~(~~Handbook, Section 3.5)]

1. The ~~State P~~program Director should ~~also~~ notify the PM two weeks before the Governor submits the formal request. The PM prepares a letter for signature by the Chairman acknowledging receipt of the request. [~~(~~sample in Handbook, Appendix ~~DC~~, Item E)]
2. The review team conducts a detailed evaluation of the formal request following the procedures and criteria in ~~Section 4.0 of the Handbook, Section 4.0~~. If the State did not submit a draft request, assemble a review team to conduct a detailed review of the request.
3. If the team identifies deficiencies in the formal request, it prepares a letter to

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the ~~State p~~Program Director providing comments. Following ~~concurrency by applicable NRC Offices, Office concurrence,~~ the Director of NMSSFSME, signs the letter.

4. The State should address the comments by making revisions to the formal request ~~and~~ ~~Send~~ the revisions to the Secretary of the Commission, with a copy to the Director of NMSSFSME.

~~E.F.~~ **EF.** ~~Work Completed by the Review Team in Parallel with the Review of the Formal Request~~

1. The team prepares a draft staff assessment addressing individually each criterion in the criteria policy statement. ~~[(sample in Handbook, Appendix D, Item FG)].~~
2. The team prepares an ~~Federal Register Notice (n-FRN) FR Notice~~ that announces the proposed Agreement and briefly describes the State's Agreement materials program. Include a summary of the draft staff assessment in the ~~FRN notice~~. The ~~FRN notice~~ should also discuss any unique features of the proposed Agreement. ~~Include Attach~~ the text of the proposed Agreement, with a proposed effective date. The Director of, NMSSFSME, usually signs the FRN. ~~notice [A sample notice is in Handbook, Appendix DG, Item H]~~

~~When the formal request satisfies the criteria policy statement, the team completes the Commission paper. The PM prepares a memo from the Division Director of MSSA transmitting the paper to the other Offices for concurrence.~~

~~Following Office concurrence, the Director of FSME forwards the paper to the EDO for signature and transmittal to the Commission.~~

3. When the formal request satisfies the criteria policy statement, the team ~~The team~~ prepares a Commission paper. [Handbook, Appendix D, Item G] The paper should request approval from the Commission to forward the FRN and proposed Agreement for publication.
  - a. The paper must include, as enclosures, the following:
    - i. Draft staff assessment
    - ii. Proposed FRN (including the summary of the draft staff assessment and proposed Agreement)
  - b. The paper must also include, as background, the following:

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- i. Draft Congressional letters and letters to the Federal agencies [Items F.2. and 3. below]
  - ii. Draft press release [Item G.2. below]
  - iii. Project Schedule for processing, signing, and implementing the Agreement [Handbook, Appendix C]
4. The PM prepares a memorandum from the Division Director of Material Safety, State, Tribal, and Rulemaking Programs (MSSAMSTR) transmitting the paper to the other Offices for concurrence. Following Office concurrence, the Director of NMSSFSME forwards the paper to the EDO for signature and transmittal to the Commission.

~~The paper must also include, as background, the following:  
Draft Congressional letters and letters to the Federal agencies,  
Draft press release, and  
Project Schedule for processing, signing, and implementing the Agreement [Handbook, Appendix C]~~

~~The Office of Public Affairs, in coordination with the PM, prepares a draft press release (sample in Handbook, Appendix C). The press release announces the publication of the proposed Agreement in the FRN. [Handbook, Appendix D, Item I]R.~~

G. Commission approval of publication of the proposed Agreement

After the Commission approves the staff recommendations, the Office of the Secretary (SECY) will issue a Staff Requirements Memorandum (SRM). When the requirements of the SRM are satisfied, the Director of NMSSFSME signs the FRN. Once the Commission approves publication of the proposed Agreement, staff takes several actions:

1. Staff forwards the FRN to the Office of Administration for publication.
2. Staff prepares letters ~~Staff sends letters~~ ~~Letters are sent to~~ the NRC Congressional Oversight Committees (Committees), the U.S. Senators and the U.S. Representatives for the affected State/Commonwealth, providing these individuals with a pre-publication copy of the FRN ~~Federal Register notice~~. Staff should work with the Office of Congressional Affairs (OCA) to obtain a current list of the NRC Congressional Oversight Committees and the current Chair and Co-Chair. Staff will also get the list of U.S. Senators and U.S. Representatives from OCA. ~~OCA~~ ~~The Office of Congressional Affairs~~ sends the letters to these Committees. [Handbook, Appendix D, Item J]

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3. Staff sends a letter to the following Federal agencies informing them of the proposed Agreement, including a pre-publication copy of the FRN [Handbook, Appendix D, Item K]:
  - a. Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration;
  - b. Assistant Secretary, Congressional and Intergovernmental Affairs, U.S. Department of Energy;
  - c. Chairperson of Council on Environmental Quality;
  - d. Director, Center for Devices and Radiological Health, Food and Drug Administration;
  - e. Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency; and
  - f. Assistant Secretary, Office of Legislative Affairs, Department of Homeland Security.

~~In coordination with the Office of Congressional Affairs, the PM prepares draft Congressional letters (sample in Handbook, Appendix C). The letters notify NRC's Oversight Committees and the State's delegation of the publication of the proposed Agreement.~~

~~5. The team prepares a negative consent Commission paper [(sample in Handbook, Appendix DC, Item G)].~~

~~The paper should request approval from the Commission to forward the FRN and FRN and proposed Agreement for publication.~~

~~The paper must include, as enclosures, the:~~

~~Draft staff assessment~~

~~Proposed FRN (including the summary of the draft staff assessment and the proposed Agreement).~~

~~The paper must also include, as background, the:~~

~~draft Congressional letters and letters to the Federal agencies, draft press release, and~~

~~Project Schedule for processing, signing, and implementing the Agreement [(Handbook, Appendix C)Section 3.4.1].~~

~~6. The PM prepares letters (samples in Handbook, Appendix C) to notify interested Federal~~

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agencies of the FRN notice. The Agreement and non-Agreement States are notified by an announcement in an All States letter.

**F. Publication of the Proposed Agreement**

Upon publication of the FRN, the PM issues a FSME letter to Agreement States, non-Agreement States, and State Liaison Officers, including a copy of the FRN, informing them of the proposed Agreement. [Handbook, Appendix D, Item L] notice to the All State letters notifying the Agreement States and the letters to the interested Federal agencies.

a. The PM informs the Office of Public Affairs (OPA) of the publication so OPA can issue a press release. [Handbook, Appendix D, Item I].

**H. Publication of the Proposed Agreement**

1. Upon publication of the FRN, the PM issues a State and Tribal Communication (STC) FSME letter to Agreement States, non-Agreement States, and State Liaison Officers, including a copy of the FRN, informing them of the proposed Agreement. [Handbook, Appendix D, Item L]
2. The PM informs the Office of Public Affairs (OPA) of the publication so OPA can issue a press release. The PM should work with OPA several weeks in advance of the expected publication of the FRN to develop the press release. [Handbook, Appendix D, Item I]

**I. End of the public comment period**

1. When the public comment period closes, the PM is responsible for preparing an analysis of the comments, working with the review team as is needed [Handbook, Appendix D, Item M]. The Office of the General Counsel should thoroughly review the comments and the proposed responses for any possible litigation risk. The PM and review team should thoroughly evaluate the comments for any implications of legal action and highlight such possibilities to OGC the Office of the General Counsel for its review of the comments and comment responses.
2. The PM and review team prepares the final staff assessment, considering the public comments. [Handbook, Appendix D, Item N]
- 4.3. ~~preparing an analysis of the comments.~~ The PM also prepares a Commission paper requesting seeking Commission approval action on the proposed Agreement. (sample in Handbook, Appendix C) [Handbook, Appendix D, Item O] The Commission paper is transmitted to other NRC Offices for review and concurrence.

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- 2.4. Enclosures to the paper are:
- a. Final text of the proposed Agreement [Handbook, Appendix D, Item U]
    - i. The NRC and the State agree on the effective date for the Agreement. The PM inserts the date into the Agreement text.
    - ii. A draft FRN announcing the approval and signing of the Agreement [Handbook, Appendix D, Item P]
  - a-b. The final staff assessment [Handbook, Appendix D, Item N]
  - c. The staff's analysis of the public comments [Handbook, Appendix D, Item M]
  - b-d. Draft letter from the Chairman to the Governor, approving the Agreement [Handbook, Appendix D, Item S]; and

~~Attachments to the paper are:~~

~~final text of the proposed Agreement;~~

~~a draft FRN notice~~

- ~~3. The following documents are included as nclude, as background to the paper:~~
  - ~~4. a. Proposed letters to NRC's Congressional Oversight Committees and the State's congressional delegation announcing the approval and signing of the Agreement [Handbook, Appendix D, Item R]; and~~
  - ~~5. b. A draft press release announcing the Agreement [Handbook, Appendix D, Item Q]~~
  - ~~6. a. Sample letters and press releases are in the Handbook, Appendix C.~~
- 7-5. The paper must contain brief discussions of:
- a. Staff's consideration, analysis and resolution of public comments;
  - b. Outstanding orders, Confirmatory Action Letters, and 2.206 petitions against licensees that will transfer;
  - c. Staff coordination to resolve incomplete escalated enforcement actions. The discussion should indicate **that** we informed the State if **the** NRC will retain jurisdiction for violations that occurred at a licensed facility while under NRC jurisdiction. ~~OGC The Office of the General Counsel~~ has ruled that **the** NRC has the authority under Section 234 of the ~~AEEAct~~ to

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issue a Notice of Violation and Civil Penalty Assessment to transferred licensees. However, the NRC does not have authority to require corrective actions after the Agreement is effective;

- d. The status of any complex site or other sites in decommissioning. The discussion should indicate how the State was advised to notify the NRC when it terminates the license of a complex site. The notification from the State should indicate whether the site was released for unrestricted use as defined by the State. The decommissioning status of complex sites transferred to the State will be reviewed as part of ~~NRC's Integrated Materials Management Performance Evaluation Program~~ IMPEP;
  - e. How information was provided to the State regarding previously licensed sites;
  - f. Allegations and investigations in progress; however, details should not be included; and
  - g. The NRC resources that staff anticipates devoting to facilities in the State once the Agreement is in effect.
6. The following documents are included as background to the paper:
- a. Proposed letters to NRC's Congressional Oversight Committees and the State's congressional delegation announcing the approval and signing of the Agreement. [Handbook, Appendix D, Item R]
  - b. A draft press release announcing the Agreement [Handbook, Appendix D, Item Q]
  - c. A completed copy of the General Accounting Office form, GAO-001, "Submission of Federal rules under the Congressional Review Act," providing the notifications required under the Congressional Review Act Small Business Regulatory Enforcement and Fairness Act of 1996 (Formerly Small Business Regulatory Enforcement Fairness Act). Form GAO-001 is available on the NRC website's forms library.
    - i. Three forms are completed: (1) President of the Senate, (2) Speaker of the House of Representatives, and (3) General Accounting Office.
    - ii. The Agreement is considered a "non-major rule" and "routine and frequent of informational/administrative/other."
    - iii. The form is included as background to the Commission paper and submitted to the OCA ~~Office of Congressional Affairs~~ for distribution once the Agreement is approved. Include a copy of the draft FRN with each form. It is not made publically available in the Agencywide

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Documents Management System.

~~8. The NRC and the State agree on the effective date for the Agreement. The PM inserts the date into the Agreement text~~

~~9. The Governor has the choice of signing the Agreement at a formal ceremony or signing by correspondence. The PM consults with the State program Director to determine the Governor's choice. The PM also determines the format of the Governor's signature block, and if the State wishes to add a State seal.~~

~~c. If the Chairman and Governor will hold a formal signing ceremony, the date, time and place of the ceremony must be arranged. The PM coordinates with the State staff and, through the EDO, with the Chairman's office.~~

~~d. If the Agreement is to be signed by correspondence, the location at which the Chairman signs is Rockville, Maryland. The location at which the Governor signs is the State capitol, unless the State specifies another location.~~

~~b. If the Agreement is to be signed by correspondence, the PM asks the State program Director to provide instructions for delivery of the Agreement to the Governor.~~

J. Commission approval of the Agreement

~~1. The PM prepares assembles the Commission paper and attachments for concurrence by other NRC Offices involved with the review of the Agreement concurrence.~~

~~2. The Director of, FSME, forwards the Commission paper to the EDO following Office concurrence.~~

1. When the Commission approves the Agreement, the PM prepares three official copies of the Agreement for signature, inserting the date of Commission approval, i.e., the ~~(the date of the SRM, )~~into into the Agreement.

2. The Governor has the choice of signing the Agreement at a formal ceremony or signing by correspondence. The PM consults with the ~~State Program~~ Director to determine the Governor's choice. The PM also determines the format of the Governor's signature block, and if the State wishes to add a State seal.

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- a. If the Chairman and Governor will hold a formal signing ceremony, the date, time and place of the ceremony must be arranged. The PM coordinates with the State staff and, through the EDO, with the Chairman's office.
- b. If the Agreement is to be signed by correspondence, the location at which the Chairman signs is Rockville, Maryland. The location at which the Governor signs is the State capitol, unless the State specifies another location.
- c. If the Agreement is to be signed by correspondence, the PM asks the ~~State Program Director~~ to provide instructions for delivery of the Agreement to the Governor.
- 3. The Division Director of ~~MSTR, DMSSA, MSSA~~ forwards the Congressional letters and three copies of the Congressional Review Act form to ~~OCA~~ the ~~Office of Congressional Affairs~~.  
~~Address the forms by filling the appropriate box at the top. Attach a copy of the draft FR notice FRN to each form. An example sample copy of this form the Congressional Review Act form is in Appendix DC to the Handbook.~~

K. Signing of the Agreement

- 1. If the Chairman and Governor will sign the Agreement at a formal ceremony:
  - a. The PM places ~~three the~~ copies of the Agreement into individual binders.
  - b. The PM coordinates with SECY to place the NRC seal on each copy before the ceremony.
  - c. After signing, the Governor receives one copy of the Agreement. The PM takes the other two.
    - i. One copy of the Agreement remains with SECY.
    - ii. The remaining copy of the Agreement remains with ~~NMSSFSME~~.
  - d. The State should receive the letter from the Chairman to the Governor approving the Agreement. [Handbook, Appendix D, Item S]
- 2. If the Agreement is signed by correspondence:
  - a. The PM coordinates with SECY to place the NRC seal on each copy of the Agreement.
  - b. The PM coordinates with EDO and the Chairman's office to arrange for

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the Chairman to sign all three copies of the Agreement.

- c. The PM sends all three copies of the Agreement to the State according to the State instructions ~~requested in Section V.G.5.c of this procedure.~~ **Include the original letter from the Chairman to the Governor approving the Agreement. [Handbook, Appendix D, Item S]** After the Governor signs the Agreement, the State retains one copy and returns the other ~~s~~ two **copies** to the Director of, **NMSSFSME**.
  3. The PM delivers one copy of the signed Agreement to SECY. **NMSS FSME** retains the other copy in the **State's Agreements** file.
- L. Implementation of the Agreement
1. The Division Director of ~~MSTR, DMSSA, MSSA~~ forwards the ~~FR notice~~ **FRN**, as approved in the SRM, to the Rule ~~making, Announcements,~~ and Directives Branch of the Office of Administration. Section 274e.(2) of the ~~AEAA~~ Act requires publication of the ~~FR notice~~ **FRN** within 30 days after the Agreement is signed.
  2. The Region and ~~NMSSFSME~~ coordinate with the State on transferring license files to the State. ~~The RSAO should advise the PM of the plans for, and the progress of, the transfer. The two references below should be followed in transferring the license files:~~
    - a. ~~NRC MD 3.53, "NRC Records and Document Management Program," Records Disposition Objectives and Procedures (c), paragraph 8)~~
    - ~~e-b. NRC Inspection Manual Chapter, Manual Chapter 2882, "Transfer of NRC License Files to Agreement State(s)" —The RSAO should advise the PM of the plans for, and the progress of, the transfer.~~
  3. The PM informs ~~alerts the Office of Public Affairs (OPA)~~ of approval of the Agreement so that OPA can ~~to~~ issue the press release announcing the approval of the ~~effective~~ Agreement. The PM should work with OPA several weeks in advance of the expected publication of the FRN to develop the press release.
  4. ~~Staff sends letters to the NRC Congressional Oversight Committees, the U.S. Senators and the U.S. Representatives, as well as to the State Congressional delegation, providing these individuals with a pre-publication copy of the FRN Federal Register notice. Staff should work with the Office of Congressional Affairs (OCA) to obtain a current list of the NRC Congressional Oversight Committees and the current Chair and Co-Chair. Staff will also get the list of U.S. Senators and U.S. Representatives from OCA. Staff prepares~~

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letters to the NRC Congressional Oversight Committees (Committees), the U.S. Senators and the U.S. Representatives for the affected State/Commonwealth, providing these individuals with a pre-publication copy of the FRN. Staff should work with ~~the Office of Congressional Affairs (OCA)~~ to obtain a current list of the NRC Congressional Oversight Committees and the current Chair and Co-Chair. Staff will also get the list of U.S. Senators and U.S. Representatives from OCA. ~~The Office of Congressional Affairs~~ OCA sends the letters to these Committees. [Handbook, Appendix D, Item R~~J~~]

5. Staff sends a letter to the following Federal agencies informing them of the proposed Agreement, including a pre-publication copy of the FRN [Handbook, Appendix D, Item ~~K~~T]:
  - a. Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration;
  - b. Assistant Secretary, Congressional and Intergovernmental Affairs, U.S. Department of Energy;
  - c. Chairperson of Council on Environmental Quality;
  - d. Director, Center for Devices and Radiological Health, Food and Drug Administration;
  - e. Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency; and
  - f. Assistant Secretary, Office of Legislative Affairs, Department of Homeland Security.
- ~~4-6.~~ The staff issues a STC ~~FSME~~ letter to Agreement States, non-Agreement States, and State Liaison Officers, including a copy of the FRN, informing them of the Agreement. [Handbook, Appendix D, Item V.]
- ~~4.~~ The PM prepares letters announcing the effective date of the Agreement. Letters go to interested Federal agencies, and the affected NRC material licensees are notified by the appropriate region. The Agreement and ~~n~~Non-Agreement States are notified in an All States letter. The Division Director, DMSSA, signs the letters. The PM provides the new Agreement State program Director copies of the announcements.

M. After the Agreement is effective

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- 2-1. Approximately nine months after the Agreement becomes effective, a meeting is set up with the State Agreement materials program management. The orientation meeting is to discuss the State's implementation of the Agreement materials program (*State AgreementFSME Procedure SA-118, Orientation Meeting for New Agreement States*).
- 3-2. Approximately 18 months after the Agreement becomes effective, the first IMPEP review is conducted (NRC MD 5.6)
  - a. The first IMPEP review evaluates the initial performance of the State program.
  - b. Normally, the first review is not scheduled for earlier than approximately 18 months after the Agreement becomes effective. If scheduled earlier, the State may not have completed enough regulatory actions to support an IMPEP finding.

**VI. APPENDICES**

*Handbook for Processing an Agreement*

**VII. REFERENCES**

- A. Sections 11 and 274 of the Atomic Energy Act of 1954, as amended
- B. Commission policy statement, *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 on July 16, 1981 (46 FR 36969), and July 21, 1983 (48 FR 33376)
- C. NRC Management Directive 3.53, *NRC Records Management Program*, ~~June 15, 1995~~ **March 15, 2007**  
~~NRC Inspection Manual Chapter, Manual Chapter 2882, "Transfer of NRC License Files to Agreement State(s)"~~
- D. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, ~~November 25, 1997~~ **February 26, 2004**
- E. NRC Management Directive 5.8, *Proposed 274b Agreements with States*, ~~September 9, 2004~~ **June 25, 2013**
- F. NRC Management Directive 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*, January 5, 1999

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- G. NRC Inspection Manual Chapter, Manual Chapter 2882, "Transfer of NRC License Files to Agreement State(s)," December 3, 2001
- H. State Agreement~~FSME~~<sup>6</sup> STP Procedure SA-118, Orientation Meeting for New Agreement States, ~~March 9, 2005~~ March 19, 2010

**VIII. ADAMS REFERENCE DOCUMENTS**

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

No.	Date	Document Title/Description	Accession Number
1	7/19/2007	<del>FSME</del> State Agreement Procedure, Processing an Agreement – SA-700	ML072160020
2	7/19/2007	FSME SA-700 Procedure, Redline/Strikeout Copy	ML072210542
3	7/19/2007	FSME SA-700 Handbook, Redline/Strikeout Copy	ML072210549
4	7/19/2007	FSME SA-700 Handbook, Appendix C, Redline/Strikeout Copy	ML072210655

~~6 Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with NMSS on October 6, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. Procedures issued under FSME are still in effect as an NMSS procedure. When those procedures are next reviewed and reissued, the name will be changed to an NMSS procedure. In the interim, current procedures will still be referenced as FSME State Procedures until such time as they are reviewed and revised to include the official office name. All procedures may be found on the NMSS external website under "Resources and Tools," and then "NMSS Procedures."~~

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No.	Date	Document Title/Description	Accession Number
5	08/22/2006	STP-06-073, Opportunity to Comment on Draft Revision to STP Procedure SA-700, <i>Processing an Agreement</i>	ML062290300
6	01/30/2007	FSME SA-700 Procedure – Resolution of Comments	ML072210663
7	02/14/2014	FSME-14-016, <del>insert FSME letter number</del> Opportunity to Comment on Draft Revision to SA-700	ML14035A324
9	XX/XX/2014	<del>Comment Resolution - Summary of</del> Comments on SA-700 (version dated XX/XX/201X)	MLXXXXXXXXXX
10	XX/XX/2014	NMSS State Procedure, <i>Processing an Agreement – SA-700</i>	MLXXXXXXXXXX

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