



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 15, 2021

Gunnar Peters, Chairman
Menominee Indian Tribe of Wisconsin
PO Box 910
Keshena, WI 54135

SUBJECT: STATE OF INDIANA LETTER OF INTENT TO ASSUME REGULATORY
AUTHORITY CURRENTLY HELD BY THE U.S. NUCLEAR REGULATORY
COMMISSION

Dear Chairman Peters:

I am writing to inform you that on June 11, 2021, the State of Indiana submitted a letter of intent to the U.S. Nuclear Regulatory Commission (NRC) to pursue an agreement with the NRC to assume regulatory authority over the possession and use of byproduct material, source material and special nuclear material in limited quantities used at academic, commercial, and medical facilities through the NRC's Agreement State Program. The NRC's Agreement State Program allows the NRC to discontinue, and a State to assume regulatory authority over radioactive materials and activities specified in an Agreement. In accordance with the NRC's Tribal Policy statement, which promotes tribal outreach to keep Indian Tribes informed about the agency actions and plans, the NRC will conduct outreach activities with federally recognized Tribes beginning at the Letter of Intent stage of an Agreement State application. The NRC encourages participation by federally - and State recognized Tribes in the regulatory process. The NRC's tribal liaisons (TLs) will serve as the primary points of contact as we implement our Federal Trust Responsibility. Specifically, the TL, along with the NRC Project Manager for the Indiana Agreement, will inform the Tribes of the process and expectations and differences between responsibilities and level of engagement once the Agreement is in effect.

Since the submittal of the letter of intent, the State of Indiana has started to work on their draft application, drafting regulations and amending their legislation. The NRC expects that the State will submit its draft regulations for review later this year and will continue to work on other related activities to support submittal of its draft application in 2024.

In accordance with the NRC's process, the NRC will review the letter of intent and subsequent proposed agreement to determine whether the State's radiation control program is adequate to protect public health and safety and compatible with the NRC's nuclear materials program. If the Agreement is approved, the NRC would retain regulatory authority over byproduct material related to uranium and thorium milling activities, the evaluation of sealed sources and devices containing radioactive materials, the land disposal of low-level radioactive waste and the regulation of commercial nuclear power plants (NPPs). The NRC would continue to consult with the Menominee Indian Tribe of Wisconsin, as appropriate, on the regulatory activities involving NPPs.

Enclosed is a fact sheet on the NRC's Agreement State Program and a set of frequently asked questions. The NRC will keep you informed as the State of Indiana's application moves through the review and approval process.

If you have questions or concerns regarding the Agreement State Program, please contact Mr. Brian Anderson, Branch Chief, Agreement State Programs Branch at (301) 415-9967, or by e-mail at Brian.Anderson@nrc.gov.

Sincerely,



Signed by Williams, Kevin
on 10/15/21

Kevin Williams, Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

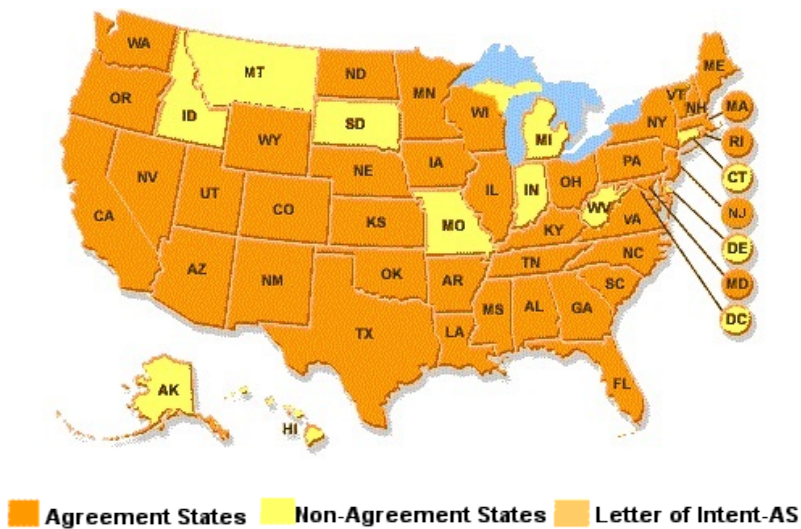
1. Fact Sheet about the Agreement State Program
2. Frequently Asked Questions

“Fact-Sheet” about the Agreement States Program

Agreement States Program

Under the U.S. Nuclear Regulatory Commission’s (NRC) Agreement State Program, a State signs a formal agreement with the NRC to assume regulatory authority over certain types of radioactive materials. The program was established in 1959, with the first agreement signed in 1962. Once a State signs such an agreement, it is commonly referred to as an Agreement State. Currently, there are 39 Agreement States.

While the NRC discontinues regulatory authority, the agency still maintains an oversight role by conducting periodic reviews of Agreement State programs. This is accomplished through the NRC’s Integrated Materials Performance Evaluation Program. The goal of this process is to ensure that States’ programs protect public health and safety and operate in a manner consistent with the NRC’s regulatory program.



The NRC provides support and assistance to Agreement States, starting when a State expresses interest in signing an agreement and continues after an agreement is signed. For example, the NRC:

- sponsors and conducts technical training courses and workshops;
- evaluates State rule changes to ensure compatibility with the NRC’s requirements; and
- provides opportunities for early and substantive involvement in the NRC’s rulemaking and other regulatory efforts.

Major steps in the process by which a State becomes an Agreement State:

- The Governor sends a letter to the NRC Chairman expressing the intent to become an Agreement State.
- The State submits a draft application to the NRC for review and comment.
- The Governor certifies that the State has an adequate program and submits a formal request that includes supporting legislation, regulations, program description, and staffing.
- The NRC assesses the request and, after Commission approval, publishes the staff’s assessment and proposed Agreement in the *Federal Register* for a 30-day public comment period.

“Fact-Sheet” about the Agreement States Program

- The NRC assesses public comments and prepares a final assessment.
- After Commission approval, the Chairman and the Governor sign the Agreement.

Timeframe to become an Agreement State:

The NRC’s part of the process takes about a year to complete, from the time the agency receives the formal request. Adding the time, it takes for the State to develop its program and regulations, after the letter of intent, the entire process typically requires three to five years.

Frequently Asked Questions Regarding the State of Indiana's Request to Pursue an Agreement with the U. S. Nuclear Regulatory Commission

What is an Agreement State?

Congress authorized the NRC in Section 274b. of the Atomic Energy Act to enter into Agreements that allow States to assume, and the NRC to discontinue, regulatory authority over byproduct, source, and small quantities of special nuclear material. The State can then regulate byproduct, source and small quantities of special nuclear materials that are covered in the Agreement, using its own legislation, regulations, or other legally binding provisions. The Commission will enter into an Agreement if the Commission finds the State program adequate to protect public health and safety and compatible with the NRC's regulatory program. The NRC ensures that an Agreement State program remains adequate and compatible through periodic review and assessment under the Integrated Materials Performance Evaluation Program.

How many states are currently in the Agreement State Program?

There are 39 Agreement States that regulate approximately 16,500 radioactive material licenses, or approximately 88 percent of all radioactive material licenses nationally.

What exactly would the Agreement with Indiana allow the State to regulate and what would the NRC continue to regulate?

The Agreement that Indiana has requested will allow the State to assume regulatory authority over the possession and use of byproduct material, source material and special nuclear material in limited quantities used at academic, commercial, and medical facilities. Once the Agreement is approved by the Commission, Indiana will regulate approximately 200 radioactive material licensees. The NRC would retain regulatory authority over federal agencies, nuclear power plants, federally recognized Tribal lands and the evaluation of sealed sources and devices within the State.

What are the steps in the process by which a State becomes an Agreement State?

The major steps are:

- The Governor sends a letter to the NRC Chairman expressing the intent to become an Agreement State.
- The State submits a draft application to the NRC for review and comment.
- The Governor certifies that the State has an adequate program and submits a formal request that includes supporting legislation, regulations, program description and staffing.
- The NRC assesses the request and after Commission approval publishes the staff's assessment and proposed Agreement for a 30-day comment period.
- The NRC assesses public comments and prepares a final assessment.
- After Commission approval, the Chairman and the Governor sign the agreement.

How long is the proposal review process that results in a State becoming an Agreement State?

The NRC's part of the process takes about a year to complete starting when the agency receives the final application from the State. Adding the time, it takes for the State to develop its program, train its staff, and adopt compatible regulations, after it sends in a letter of intent, the entire process typically requires approximately 4 years.

Frequently Asked Questions Regarding the State of Indiana's Request to Pursue an Agreement with the U. S. Nuclear Regulatory Commission

Where is Indiana's application within this timeline?

The NRC has been working with the State of Indiana since July 2021. Governor of the State of Indiana submitted a letter of intent to the NRC Chairman on June 11, 2021. Current projections are that the Agreement application process will be completed, and the Agreement signed by the end of 2025.

What opportunities are currently available or will be available in the future to comment on the State's program and the governing regulations?

Those interested in receiving notifications from the Indiana's Department of Homeland Security (IDHS) of major developments in their process to adopt regulations to support an Agreement State application should contact IDHS's Radiation Program Director, Sarah Chaney at schaney@dhs.in.gov or (317) 296-9208.

Will the National Historic Preservation Act (NHPA) and/or the National Environmental Policy Act (NEPA) reviews continue to be part of application reviews for materials covered under the Agreement once Indiana becomes an Agreement State?

No, unless another federal agency, such as the Bureau of Land Management or the Environmental Protection Agency, is involved in the licensing action. The NHPA and NEPA are Federal statutes that apply to federal undertakings and major federal actions significantly affecting the quality of the human environment. Future licensing reviews would be State actions and subject to the regulations developed by the State of Indiana.

Would the transfer of regulatory authority from the NRC to the State of Indiana be considered a Federal undertaking as defined in the NHPA and therefore require consultation to comply with Section 106 with federally recognized Tribes and other concerned individuals and stakeholders?

No. The review and consideration of an application for an Agreement is not a federal undertaking that is subject to NHPA Section 106 review.

If federally recognized Tribes have concerns about the Indiana Agreement State proposal and the impact of the NRC's acceptance of Indiana as an Agreement State on Tribal engagement what are the channels for expressing these concerns?

Federally recognized Tribes may contact the NRC with any concerns about Tribal engagement. Information on the Indiana Agreement State proposal can be obtained from Duncan White, Indiana Agreement Project Manager (duncan.white@nrc.gov, (301) 415-2598).

Will the State of Indiana regulate activities on Tribal land held in trust by the Federal government, Tribal reservations, or allotted land?

No. Federally recognized Tribes and their land or reservations that are in an area of exclusive federal jurisdiction are only subject to the NRC's regulatory authority. The NRC will continue to regulate the possession and use of byproduct, source, and special nuclear materials if they are on land or reservations under exclusive federal jurisdiction. There are currently no facilities in Indiana that would be transferred to the State as part of the Agreement that are located on Tribal land. Case-by-case determinations will be needed to determine regulatory authority over Tribal lands that are not under exclusive federal jurisdiction.

*Frequently Asked Questions Regarding the State of Indiana's Request to Pursue an Agreement
with the U. S. Nuclear Regulatory Commission*

What if a federally recognized Tribe leases its land to a private operator? Who would regulate?

The NRC would still be the regulatory authority if a federally recognized Tribe leases its land under exclusive federal jurisdiction to a private operator. Case-by-case determinations would be needed to determine regulatory authority if the Tribal lands are not under exclusive federal jurisdiction.

LETTER TO TRIBES REGARDING STATE OF INDIANA LETTER OF INTENT TO ASSUME
 REGULATORY AUTHORITY CURRENTLY HELD BY THE U.S. NUCLEAR REGULATORY COMMISSION
 DATE October 15, 2021

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