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**Responses to Public Comments
State of Connecticut: NRC Staff
Assessment of a Proposed
Agreement Between the Nuclear
Regulatory Commission and the
State of Connecticut**

Docket ID: NRC-2025-0010

U.S. Nuclear Regulatory Commission
Office of Nuclear Materials Safety and Safeguards

August 2025



Enclosure 2

**Analysis of Public Comments on State of Connecticut: NRC Staff Assessment
of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of
Connecticut**

Introduction

This document presents the U.S. Nuclear Regulatory Commission (NRC) responses to public comments received on the NRC staff assessment of a proposed Agreement between the NRC and the State of Connecticut. The original request for comment was issued in the *Federal Register* on March 19, 2025 (90 FR 12795). The public comment period closed on April 18, 2025.

Overview of Public Comments

The NRC received one anonymous public comment document. This document provided comments in an essay format which touched on various topics. The comment can be found at ADAMS Accession No. [ML25113A067](#).

Comment Organization

In this document, the NRC has paraphrased and summarized the comments into five categories for conciseness and clarity:

- A. Re-notice the proposed Agreement and proposed exemptions after the Commission establishes, through regulation or order, that an opportunity for comment is appropriate. Publish the proposed exemptions necessary or appropriate to carry out the Agreement.
- B. Re-notice the public comment period for a longer period determined by the Commission, through regulation or order, and provide the information in the docket in a more clear and concise manner.
- C. The Connecticut proposed Agreement does not include the whole category for byproduct material (i.e., 11(e).1 byproduct material for sealed source or devices (SS&Ds)) and is not allowed to assume regulatory authority for only part of a category. This could diffuse regulatory responsibility between the NRC and the State and is inconsistent with the Commission's policy statement, assigned compatibility categories, Title 10 of the *Code of Federal Regulations* (10 CFR) 150.10, the Atomic Energy Act of 1954, as amended (AEA), and the Commission's Principles of Good Regulation, specifically "reliability".
- D. The NRC should endeavor to make the compatibility categories and their changes over time more transparent and readily available and should re-notice the proposed Agreement.
- E. There is no indication that the Commission consulted with any Indian tribes or others for considering the effects of this undertaking on historic properties. The Commission can address its tribal responsibility by considering whether to approve an Agreement for reasons other than compatibility and adequacy.

Comments and Responses

- A. Re-notice the proposed Agreement and proposed exemptions after the Commission establishes, through regulation or order, that an opportunity for comment is appropriate. Publish the proposed exemptions necessary or appropriate to carry out the Agreement.

Comment: The Commission never made a determination by regulation or order, as required by AEA, subsection 274e.(1), to provide an opportunity for comment on the proposed Agreement and any proposed exemptions. In addition, the Commission never published the proposed exemptions necessary or appropriate to carry out the agreement in accordance with AEA, subsection 274e.(1).

NRC Response: The NRC disagrees with this comment. Subsection 274f. of the AEA, as amended states:

The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in subchapters V, VI, and VII, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection (b) of this section.

Subsection 274f. of the Act is implemented by 10 CFR 150.10. In 10 CFR 150.10, it states in part:

...any person in an Agreement State who manufactures, produces, receives, possesses, uses, or transfers byproduct material, source material, or special nuclear material in quantities not sufficient to form a critical mass is exempt from the requirements for a license contained in Chapters 6, 7, and 8 of the Act, regulations of the Commission imposing licensing requirements upon persons who manufacture, produce, receive, possess, use, or transfer such materials, and from regulations of the Commission applicable to licensees.

10 CFR 150.10 provides the regulatory mechanism to exempt persons in an Agreement State from the NRC's authority. The Commission approved this regulation after providing notice and an opportunity for public comment during the rulemaking process. (37 FR 9208, May 6, 1972, as amended at 45 FR 50718, July 31, 1980; 75 FR 73946, Nov. 30, 2010). This exemption is stated in the first paragraph of the draft Agreement between the NRC and the State of Connecticut. The State of Connecticut did not request any additional exemptions. Therefore, the NRC did not publish any additional proposed exemptions.

No changes were made in response to this comment.

B. Re-notice the public comment period for a longer period determined by the Commission, through regulation or order, and provide the information in the docket in a more clear and concise manner.

Comment: The Commission should establish in either regulation or an order the appropriate time that the public would be allowed to comment on the proposed Agreement and on the proposed exemptions. The way the information is provided in the docket for this proposed Agreement is not conducive for public comment and the public comment period should be at least 45 or 60 days after the final notice.

NRC Response: The NRC disagrees with this comment. The opportunity to comment on the proposed Agreement and length of the public comment is consistent with Section 274e.(1) of the AEA. Section 274e(1) of the AEA states:

Before any agreement under subsection (b) is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection (f) shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions

shall be allowed as the Commission determines by regulation or order to be appropriate.

Section 274e.(1) of the AEA requires the NRC to publish the agreement once each week for four consecutive weeks in the *Federal Register*. The NRC published the proposed Agreement for a 30-day comment period, which the NRC considers reasonable. The NRC did not receive any requests for extension of the public comment period.

In addition to including a summary of the staff assessment, all four *Federal Register* Notices provided a table of references which includes the application, acceptance criteria used as part of the NRC staff's review, and the full staff assessment. These documents and the summary of the staff assessment clearly describe the staff's considerations in recommending approval of entering into an agreement with the State of Connecticut.

No changes were made in response to this comment.

- C. The Connecticut proposed Agreement does not include the whole category for byproduct material (i.e., 11(e).1 byproduct material for SS&Ds) and is not allowed to assume regulatory authority for only part of a category. This could diffuse regulatory responsibility between the NRC and the State and is inconsistent with the Commission's policy statement, assigned compatibility categories, 10 CFR 150.10, the AEA, and the Commission's Principles of Good Regulation, specifically "reliability".**

Comment: Item 27 of the U.S. Nuclear Regulatory Commission's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," (48 FR 33376; July 21, 1983) states, "[a]n amendment providing for discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State may relate to any one or more of the following categories of materials within the State...but must relate to the whole of such category or categories and not to a part of any category..." The proposed Agreement does not include the whole category for 11e.(1) byproduct material.

Article II.F. in the proposed Agreement is not consistent with: 1) the AEA, 2) the Nuclear Regulatory Commission's policy statement, "*Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*," and 3) with the exemptions included at 10 CFR part 150. Since it is not consistent with the exemptions in 10 CFR part 150, the NRC is not consistent with the principle of "reliability" found in the NRC's Principles of Good Regulation.

Additionally, the NRC's approach to SS&Ds would indicate that the compatibility category assigned to the relevant regulatory requirements are inconsistent with the Commission's stated policy and 10 CFR Part 150.

Also, where the regulation of SS&Ds is the partial responsibility of the NRC and the Agreement State such a relationship can diffuse regulatory responsibility, which is inappropriate and could degrade safety.

NRC Response: The NRC disagrees with this comment. The Commission has entered into limited Section 274b. Agreements where the Agreement State has assumed a subset of a category of material. This was first done with the State of Oklahoma in 2000. As part of the application process

for the Oklahoma Agreement, the State of Oklahoma requested, and the Commission agreed,¹ to assume regulatory authority over a subcategory of source material. The draft Agreement with Oklahoma was published for public comment² and described this subcategory. Subsequent to the Oklahoma Agreement, in 2018, the State of Wyoming also assumed authority for a subcategory of source material using the criteria set out by the Commission for the Oklahoma Agreement in 1999.³

The Commission has recognized that Agreement States with authority over byproduct, source or special nuclear material under critical mass have authority to conduct SS&D evaluations. All Agreements approved from 1962 to 1980 automatically included the authority for Agreement States to evaluate SS&Ds. Since some Agreement States did not want this authority, in 1995, the Commission approved the process for Agreement States to voluntarily return SS&D authority to the NRC (Staff Requirements Memorandum (SRM)-SECY-95-136; [ML23151A248](#)) and SECY-95-136; ([ML12261A623](#)). The first application of this process occurred in 1996 for Iowa, North Dakota, and Utah (SRM-SECY-96-050; [ML23151A249](#)) and the most recent occurred when New York State returned SS&D authority in 2023 (SRM-SECY-23-0058; [ML23137A284](#)). Since 1995, States applying to become Agreement States could obtain regulatory authority over specific classes of radioactive materials and then choose whether to seek authority to evaluate SS&Ds in their State.

Connecticut is not seeking authority to conduct SS&D evaluations.

Therefore, the NRC will continue SS&D reviews in Connecticut as described in Article II.F of the proposed Agreement.

No changes were made in response to this comment.

D. The NRC should endeavor to make the compatibility categories and their changes over time more transparent and readily available and should re-notice the proposed Agreement.

Comment: The NRC did not include the definitions of the compatibility categories that it was using to make its proposed determination on the docket for the proposed Agreement. The NRC should re-notice the proposed Agreement after publishing the definitions of the compatibility categories to the docket and also the compatibility categories for each of the requirements that are relevant to the Commission's determination. Additionally, the NRC should re-notice the proposed Agreement after publishing the definitions of the compatibility categories to the docket and also the compatibility categories for each of the requirements that are relevant to the Commission's determination.

NRC Response: The NRC disagrees with this comment. The *Federal Register* Notice provides a summary of the draft NRC staff assessment and provides the reference to the full draft staff assessment. Based on this review, the NRC staff concluded that the Connecticut program is compatible with the NRC's program is adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement. The *Federal Register* Notice includes a reference to SA-700, "Processing an Agreement" ([ML22138A414](#)) and its accompanying handbook ([ML22140A396](#)). Section 2.3.4 of this procedure includes references to define the compatibility categories as found in NRC MD 5.9, "Adequacy and Compatibility of Program Elements for Agreement State Programs," ([ML18081A070](#)) and State Agreement Procedure SA-200,

¹ SECY-99-123 and SRM-SECY-99-123, "Oklahoma Agreement State Negotiations: State Proposal to Limit Scope of Agreement" (ADAMS Accession Nos. [ML992810133](#) and [ML003752047](#)).

² [65 FR 36169](#)

³ SRM-SECY-18-0062, "Section 274b. Agreement with the State of Wyoming" ([ML18253A236](#))

"Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements" ([ML20183A325](#)). These resources include the definitions of the compatibility categories.

No changes were made as a result of this comment.

E. There is no indication that the Commission consulted with any Indian tribes or others for considering the effects of this undertaking on historic properties. The Commission can consider whether to approve an Agreement for reasons other than compatibility and adequacy and can address its tribal responsibility through this.

Comment: There is no indication that the NRC consulted with any Indian tribes or others for considering the effects of this undertaking on historic properties. The NRC has responsibility to comply with the National Historic Preservation Act (NHPA) for undertakings conducted under its jurisdiction which should include the activities conducted to support Connecticut becoming an Agreement State. Therefore, the NRC needs to complete the historic preservation consultation process before approving the proposed Agreement.

The NRC has indicated that should it find the state's program adequate and compatible, then the Commission must approve the Agreement. However, the Commission has discretion as to whether to enter into an Agreement with a state once the preconditions have been satisfied. Reaching an Agreement to allow a state to assume jurisdiction is not a ministerial act and the NRC should not limit consideration of public input and needs of Indian tribes to consider effects resulting from the agreement such as on historic properties.

NRC Response: The NRC disagrees with this comment. Consistent with the NRC's Tribal Policy Statement, the NRC did offer consultation to Federally recognized Tribes and encouraged public participation with State recognized Tribes that may be affected by the Connecticut agreement.⁴ NRC staff engaged Federally recognized and State recognized Tribes using the process found in SA-700, Appendix E.⁵

With respect to the NHPA, a State's application to become an Agreement State is not a federal undertaking that requires compliance with the NHPA Section 106 requirements. Entering a 274b. Agreement does not fall within the definition of "undertaking" found in 36 CFR 800.16(y) which states, "[U]ndertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval." The decision whether to enter into an Agreement is not a federal undertaking because the agreement state program is not funded by the NRC and the NRC discontinues, and the State assumes, regulatory authority over the radioactive material and specified activities under the 274b. Agreement. This discontinuance of regulatory authority, as opposed to a delegation of federal authority to the Agreement State, results in the NRC having no regulatory authority over the Agreement State licensing actions under the Agreement. After the effective date of an Agreement, the State licensing actions will continue to be subject to existing State environmental, historic preservation and tribal consultation requirements.

Additionally, the NRC does not have discretion on whether to enter into an Agreement if the state meets the requirements in 247d., which requires the Commission to enter into an agreement if the

⁴ <https://www.nrc.gov/about-nrc/state-tribal/tps.html>

⁵ SA-700, "Processing an Agreement" ([ML22138A414](#)) and its accompanying handbook ([ML22140A396](#))

Commission finds the State program compatible with the NRC's national regulatory program and adequate to protect public health and safety.

No changes were made as a result of this comment.