



Office of Nuclear Material Safety and Safeguards (NMSS) Interim Procedure Approval

Jurisdiction Determinations - SA-500

Issue Date:

Review Date:

September 15, 2023

Kevin Williams

Kevin Williams Director, NMSS/MSST

Signed by Williams, Kevin
on 09/14/23

Adelaide Giantelli

Adelaide Giantelli Branch Chief, NMSS/MSST/SLPB

Johnson, Robert signing on behalf
of Giantelli, Adelaide
on 09/15/23

Duncan White

Duncan White Procedure Contact, NMSS/MSST/SLPB

Signed by White, Alfred
on 09/14/23

ML23228A191

NOTE

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

I. INTRODUCTION

This procedure describes the process for resolving questions of jurisdiction involving the use of byproduct, source, and special nuclear material (SNM) within Agreement States, i.e., whether the Nuclear Regulatory Commission (NRC) or an Agreement State is the appropriate licensing agency in certain cases.

II. OBJECTIVE

To provide guidance to the NRC staff on determining jurisdiction involving the use of byproduct, source, and SNM within Agreement States.

III. BACKGROUND

In general, Agreement States exercise regulatory authority over their licensees and lands within their boundaries under the terms of their Agreement with the NRC.¹ The NRC exercises regulatory authority in non-Agreement States and maintains regulatory authority over certain categories of radioactive materials, activities, and categories of federal lands within Agreement States. It is important to note that federal agencies themselves are not subject to the licensing and regulatory jurisdiction of an Agreement State but continue to be regulated by the NRC because of the sovereign immunity of the Federal Government. The NRC also maintains regulatory authority over common defense and security within Agreement States.² The following section provides more detailed information on this topic.

A. Activities Reserved to the NRC

Section 274b. Agreement, as implemented by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 150, does not transfer regulatory authority to the States over the following:

- a. Activities of Federal Agencies located in Agreement States (10 CFR 150.10);
- b. Activities involving SNM in quantities sufficient to form a critical mass³ (10 CFR 150.10);
- c. Construction and operation of production and utilization facilities, or any uranium enrichment facility;
- d. Import or export of source, byproduct, and SNM (10 CFR 150.15(a)(2));
- e. Disposal of radioactive wastes into the ocean or sea (10 CFR 150.15(a)(3));

¹ Section 274b. of the Atomic Energy Act (AEA) of 1954, as amended, authorizes the NRC to discontinue and States to assume regulatory authority over specified radioactive materials and activities for the protection of public health and safety from radiation hazards under the terms of an agreement.

² AEA Section 274m. (the statutory provision also provides that the NRC retains regulatory authority over protection of restricted data and guarding against the loss or division of special nuclear material).

³ A critical mass is defined in 10 CFR Part 150.11.

- f. High-level waste as defined in 10 CFR Part 63.2 (10 CFR 150.15(a)(5));
- g. The transfer of possession or control by the manufacturer, processor, or producer of any equipment, device commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements under Parts 30 and 40 (10 CFR 150.15(a)(6));
- h. The storage of spent fuel in independent spent fuel storage installations Independent Spent Fuel Storage Installation (ISFSI) licensed under 10 CFR Part 72 (10 CFR 150.15(a)(7)(i));
- i. Spent fuel and high-level radiation waste in a monitored retrievable storage (MRS) installation licensed under 10 CFR Part 72 (10 CFR 150.15(a)(7)(ii));
- j. The storage of Greater than Class C waste stored in an ISFSI or MRS installation (10 CFR 150.15(a)(7)(ii));
- k. Activities aboard commissioned naval vessels including both U.S.S., U.S.N.S. and Coast Guard vessels (10 CFR 150.15(b));
- l. Activities at source material facilities using greater than 2000 kg of uranium hexafluoride (UF6) (10 CFR 150.15(b));
- m. Persons in Agreement States possessing, using, or transporting SNM of low strategic significance in quantities greater than 15 grams of plutonium or U-233 or U-235 (enriched to 20 percent or more in the U-235 isotope) or any combination greater than 15 grams when computed by the equation grams = grams U-235 + grams plutonium + grams U-233 shall meet the physical protection requirements of 10 CFR Part 73 (10 CFR 150.14);
- n. The shipment of SNM in excess of 20 grams or 20 curies whichever is less of plutonium or U-233 in passenger aircraft (10 CFR 150.21); and
- o. 11e.(2) byproduct material as defined by the Atomic Energy Act of 1954, as amended (AEA), transferred to the U.S. Department of Energy (DOE) for long-term custodial care (10 CFR 150.15a).

B. Persons using byproduct material, source material and special nuclear material under NRC and DOE prime contractors in accordance with 10 CFR 30.12, 10 CFR 40.11, and 10 CFR 70.11, anywhere in the United States.

C. Byproduct or source material co-mingled and in-separable with SNM in quantities sufficient to form a critical mass at facilities within Agreement States are only subject to the NRC SNM license for the facility.

D. Offshore Operations Outside of a State's Territorial Waters:

1. Persons using byproduct, source, or SNM in offshore waters are not exempt from NRC regulation (10 CFR 150.7).
 - a. Agreement State and NRC licensees with AEA licensed radioactive material located in waters outside the territorial waters of an Agreement State are subject to NRC jurisdiction and reciprocity requirements.

E. Federal Owned or Control Lands Within An Agreement State

The Federal government also maintains regulatory authority in areas of “exclusive federal jurisdiction” referenced in 10 CFR § 150.20(a)(1)(ii). The NRC considers federally recognized Indian Tribe⁴ reservations and lands held in trust by the Bureau of Indian Affairs (BIA) to fall within this category. For federally owned lands within an Agreement State over which the Federal government exercises non-exclusive federal jurisdiction, the Agreement State would generally have the authority to license and regulate activities of non-Federal licensees on said lands for purposes of protection of public health and safety under their Agreement.

Private sector licensees performing work on federally owned or federally controlled lands within Agreement States are covered by one of the following forms of jurisdiction listed in below. Note that Federal ownership of land does not necessarily mean that licensees are subject to NRC regulatory control when working on that site.

1. Definitions – Categories of Legislative Jurisdiction
 - a. Exclusive Federal Jurisdiction (also known as exclusive legislative jurisdiction) – only Federal laws are applicable pursuant to the U.S. Constitution, federal statutes, tribal treaties, or through cession by a State.
 - b. Concurrent Jurisdiction (also known as concurrent legislative jurisdiction) – the State concerned has reserved to itself the right to exercise concurrently with the Federal government, all of the same authority.
 - c. Partial/Limited Jurisdiction (also known as partial legislative jurisdiction) – the State concerned has granted the Federal government certain portions of the State’s authority, but has reserved to itself the right to exercise, by itself or concurrently with the Federal government, other authority.⁵

⁴ For the purposes of this guidance, a “Federally recognized Tribe” is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe, pursuant to the Federally Recognized Indian Tribe List Act of 1994. A latest link to the annual Federal Register notice listing Federally recognized Tribes is usually available on the Bureau of Indian Affairs website at <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>.

⁵ When property falls within this category, a determination must be made as to the type of authority reserved to the State (e.g., authority for public health protection). In some case, the NRC may maintain

- d. Proprietorial interest (also known as proprietorial jurisdiction) - the Federal government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area.

2. Tribal Lands

On Federally recognized Indian Tribal reservations and tribal lands held in trust by BIA (tribal lands), the NRC retains jurisdiction in an Agreement State.

F. State Regulatory Jurisdiction Under an Agreement

An Agreement State assumes regulatory authority for the radioactive materials and activities covered under their Agreement with the NRC. The following are examples where an Agreement State can assert regulatory authority within their State.

- 1. Generally, non-Federal licensees using Agreement material in areas of non-exclusive federal jurisdiction.
- 2. Radiographers on reactor sites (license issued in accordance with 10 CFR Parts 50 or 52) in Agreement States.
- 3. Calibration standards in Agreement States for off-site monitors around reactors.
- 4. Activities aboard naval vessels under construction at shipyards, the Agreement State can only exercise regulatory jurisdiction before the vessel is commissioned if prior approval is received. The Agreement State should contact Division of Materials Safety, Security, State, and Tribal Programs (MSST) staff for assistance.
- 5. Decommissioned federal facilities after base closures and decommissioned naval vessels that are returned to the State.
- 6. Agreement States have regulatory authority over non-federal licensees operating in their territorial waters.
 - a. Generally, a State's territorial waters extend three geographic miles from the low-tide mark of its coastline.
 - i. There is an exception for areas of exclusive federal jurisdiction.
 - ii. Agreement State and NRC licensees operating in waters south of the international boundary line through the Great Lakes would file

regulatory authority over the area.

for reciprocity in the appropriate Agreement State or NRC if operating in non-Agreement State (e.g., Michigan) waters.

- iii. Florida and Texas territorial waters extend "three marine leagues" (approximately nine geographic miles) from their coastline in the Gulf of Mexico. Questions involving jurisdiction of other Agreement State territorial waters along the Gulf of Mexico should be referred to MSST staff and the NRC's Office of the General Counsel (OGC) for assistance.
- b. Once the vessel leaves the Agreement State territorial waters see Section III.D. above.
- 7. In situations where surface and subsurface mineral rights are owned by different parties in Agreement States, jurisdiction will be based on the surface ownership. For example, well logging conducted on private land will be under Agreement State jurisdiction even if the mineral rights are maintained by the federal government or a Federally recognized Tribe. Notification of the subsurface mineral rights owner(s) will be made in accordance with Agreement State regulations and guidance.
- 8. In general, Agreement States retain regulatory authorities over private entities operating in federally owned or controlled lands that are not areas of exclusive federal jurisdiction. There is an exception for DOE contractors operating within the Agreement State boundaries. (10 CFR 30.12, 10 CFR 40.11 and 10 CFR 70.11)
- 9. AEA Radioactive Material in Transit
 - a. If an accident or theft occurs during a shipment in an Agreement State or area under NRC's jurisdiction, the Agreement State (or NRC) where the accident or theft occurs has the regulatory lead for taking remedial action and notifying and reporting the accident or theft in accordance with the latest version of "Reporting Material Events: State Agreement (SA) Procedure: SA-300" and "Handbook on Nuclear Material Event Reporting for the Agreement States: Procedure SA-300". The regulatory authority where the accident or theft occurred should also coordinate with the Agreement State (or NRC) where the shipment originated.
 - b. If radioactive material is lost or misplaced by the carrier while in transit, the shipper (licensee) has the responsibility to report the material to the Agreement State (or the NRC) from where the loss occurred in accordance with SA-300. The shipper also has the responsibility to coordinate with the regulatory authority(ies) from where the material originated and is presumed lost.
- H. If none of the above situations apply, then jurisdictional determinations are made on a case-by-case basis following the guidance set out in Appendix A.

IV. ROLES AND RESPONSIBILITIES

The NRC Headquarters and Regional Office staff can receive requests for jurisdictional determinations. The following are roles and responsibilities for processing requests for jurisdictional determinations.

- A. The Director of the Office of Nuclear Material Safety and Safeguards (NMSS) or the NRC Regional Office is responsible for the agency's review of requests for jurisdictional determinations.
- B. The Director of the Division of MSST is responsible for providing staffing and coordinating the review with OGC, other NRC offices, the NRC Regional Offices, Agreement States and Federally recognized Tribal governments.
- C. The Branch Chief of the State Agreement and Liaison Programs Branch assigns a Project Manager (PM) for the review of jurisdictional determination requests. The Branch Chief and appropriate NRC Regional Office management approves and concurs on all jurisdictional determination correspondence.
- D. The PM is the lead contact for the jurisdictional determination and coordinates with the Regional Counsel, OGC, other NRC offices, Regional State Agreement Officer (RSAO), Tribal Liaison (TL), Regional State Liaison Officer (RSLO) as necessary, to address the jurisdictional determination request. The PM drafts correspondence to address the jurisdictional determination requests.
- E. The RSAO, RSLO or TL are usually the lead NRC points of contact with Agreement States or tribal governmental entities.
- F. OGC provides legal support for the jurisdictional determination and reviews correspondence involving the jurisdictional determination.

V. GUIDANCE

- A. The NRC staff may receive inquiries or questions from licensees on the jurisdictional status of lands or facilities controlled by a Federal Agency. These licensees should be encouraged to contact the Federal Agency controlling the proposed jobsite and to obtain a jurisdiction determination from the controlling Federal Agency. Staff should obtain the information in Appendix A or B from the licensee.
- B. Upon obtaining information on the jurisdictional status of the proposed jobsite, the licensee shall be advised to either file for reciprocity to work in NRC Jurisdiction (for Agreement State licensees only) or file for reciprocity or for a specific license, as appropriate, with the Agreement State where the work is to be conducted (for NRC licensees or licensees from other Agreement States).
- C. The NRC staff may receive inquiries or questions on the jurisdictional status of activities on Federally recognized Tribal lands from States, private sector licensees, members of the public, or Tribes. NMSS/MSST in consultation with

OGC will evaluate requests for jurisdictional determinations on a case-by-case basis.

1. Procedure for determining jurisdictional status of activities on Federally recognized Tribal land:
 - a. Licensed activities occurring on Federally recognized Tribal land is reserved to the NRC. Staff should contact MSST to determine the boundaries of the NRC's jurisdiction within Agreement States and provide information listed in Section F below. The NRC staff can also contact the appropriate Tribe and refer to BIA mapping resources at www.biamaps.doi.gov to gather information to assist MSST's determination.
 - b. Non-Federally recognized Tribal lands would fall under State authority.

D. Procedure for determining jurisdictional status of non-tribal lands:

1. NRC staff with questions on determining the jurisdictional status of lands or facilities should refer to the "NRC Procedure for Determining Exclusive Federal Jurisdiction" (see Appendix A).
2. If a determination cannot be made in accordance with above paragraph, the legal representative for the Federal Agency whose facility is involved shall be contacted (e.g., Judge Advocate General (JAG) at military facility).
3. If a jurisdiction question arises which involves a Federal Agency for which no contact has been established, inquiries should be directed to those offices (normally in Washington, DC) which maintain the real estate for the Federal Agency.
4. Staff can also contact MSST staff and the NRC's OGC for further assistance as needed.

E. If staff is unable to determine jurisdiction using the Appendices to this procedure, a request should be made to NMSS/MSST. The MSST staff will coordinate with the OGC to make jurisdictional determinations. The request to OGC should include the information detailed in Appendix B.:

VI. APPENDICES

Appendix A: NRC Staff Guidance For Determining Exclusive Federal Jurisdiction

Appendix B: Recommended Procedure for Licensees to Obtain Jurisdiction Determinations

VII. REFERENCES

- A. Atomic Energy Act of 1954, as amended.
- B. Energy Policy Act of 2005.
- C. 10 CFR Parts 30, 40, 70, and 150.
- D. NUREG-1556, Volume 19: "Guidance For Agreement State Licensees about NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance For NRC Licensees Proposing to Work in Agreement States Jurisdiction (Reciprocity)".
- E. SA-300 "Reporting Material Events: State Agreement (SA) Procedure: SA-300" (2022) and "Handbook on Nuclear Material Event Reporting for the Agreement States: Procedure SA-300".

F. VIII. AGENCYWIDE DOCUMENTS ACCESS AND MANAGEMENT SYSTEM (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	Accession Number
1	1/8/02	STP-02-001, Final STP Procedure SA-500,	ML020090709
2	1/8/02	SA-500: Jurisdiction Determinations	ML020580649
3	9/25/07	FSME Procedure SA-500	ML072610457
4	2/22/07	FSME-07-020, Opportunity to Comment on Draft Revisions to FSME Procedure SA-500	ML070570341
5	9/25/07	FSME-07-089, Final FSME Procedure SA-105	ML072610457
6	9/15/23	NMSS Interim Procedure SA-500, <i>Jurisdiction Determinations</i>	ML23228A191

Appendix A

NRC PROCEDURE FOR DETERMINING EXCLUSIVE FEDERAL JURISDICTION

I. Introduction

This appendix describes the process for resolving questions of jurisdiction over facilities and sites where NRC and Agreement State licensees may propose to operate, which determines whether NRC or an Agreement State is the appropriate licensing agency. (NOTE: Federal ownership of land does not necessarily mean that licensees are subject to NRC regulatory control when working on that site).

II. Areas of Exclusive Federal Jurisdiction

An “area of exclusive federal jurisdiction” in 10 CFR 150.20(a)(1)(ii) is an area over which the Federal government exercises legal control without interference from the jurisdiction and administration of State law. It can include federal enclaves that are created as a result of State consent at the time the Federal government acquires control over the land. Federally recognized Tribal reservations and land held in trust by BIA (tribal lands) are also considered areas of federal exclusive jurisdiction by the NRC.

III. Responsibilities and Procedures

The determination of whether a federally owned or controlled land is an area of exclusive federal jurisdiction must be made on a case-by-case basis since the status of such land is subject to change. The most effective and efficient way to make determinations is to contact the Federal Agency responsible for the land.

A. Jurisdiction determination requests or questions involving federally owned or controlled land should be handled utilizing one of the following approaches:

1. In response to inquiries or questions on jurisdictional status, the licensee should be asked to determine, from its Federal Agency contact at the site or the facility where the work is to occur, the jurisdictional status of the areas where the licensee plans to work. See Appendix B, "Recommended Procedure for Licensees to Obtain Jurisdiction Determinations," for guidance to be followed by licensees proposing to work at federally controlled jobsites in Agreement States. If the area is under exclusive federal jurisdiction, an Agreement State licensee should obtain, if practicable, a written statement from the Federal facility to that effect and apply for reciprocity using NUREG-1556 Volume 19 "Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)" .
2. If a licensee has been unable to obtain a jurisdictional determination on a proposed Federally controlled jobsite or is unable to identify a local or regional Federal Agency representative, the NRC staff (Regional or

Headquarters) should direct the licensee to contact the appropriate Federal Agency headquarters contact for assistance in identifying the name of the appropriate local or regional representative the licensee should contact to obtain the determination.

3. An NRC non-Federal Agency licensee planning to conduct operations at a Federal facility, where the Agreement State has jurisdiction (i.e., it is not an area of exclusive federal jurisdiction), must file for reciprocity with the Agreement State regulatory authority in accordance with the State's regulations or obtain a specific license from that State.
- B. Any company proposing to use Agreement materials on Federally recognized Tribal reservation or lands held in trust by BIA (tribal lands) lands should be directed to NMSS/MSST. Jurisdictional determinations on questions involving Federally recognized Tribal lands will be reviewed and handled on a case-by-case basis in accordance with Section V.C.
- C. Any questions on radioactive material not meeting the definition of byproduct, source, or special nuclear material should be directed to the appropriate Agreement State or non-Agreement State Radiation Control Program Office contacts at <https://www.nrc.gov/agreement-states.html>.

Appendix B

RECOMMENDED PROCEDURE FOR LICENSEES TO OBTAIN JURISDICTION DETERMINATIONS

If you intend to conduct licensed activities at a federally owned or controlled site in an Agreement State, the jurisdictional status of the site should be determined. If you are uncertain regarding the jurisdictional status of a proposed jobsite, it is recommended that you take the following steps:

- A. Identity the Federal Agency or federally recognized Tribe owning or controlling the proposed jobsite.
- B. Obtain the following specific information regarding the location of the proposed jobsite:
 1. Location where the activity is occurring. This may include the latitude and longitude coordinates;
 2. Maps showing known jurisdictional boundaries in the proposed jobsite and surrounding area such as international, State, tribal lands/reservations, or maritime limits and boundaries;
 3. The type and quantity of AEA radioactive material in question;
 4. Contracts between parties working at the site in question;
 5. Parties involved in the activity (e.g., private company, DOE, military, federally recognized Tribe, or another Federal Agency); and
 6. Any prior jurisdictional determinations made at the site in question (e.g., Judge Advocate General opinions at military facilities).
- C. For Agreement State or NRC licensees operating on federally owned or controlled property and offshore waters:
 1. Call the Federal Agency's local contact (contract officer, base environmental health officer, district office staff, Regional Office staff, Regional Counsel, etc.) and request information regarding the jurisdictional status of the proposed jobsite. We recommend that you request such a statement in writing. Otherwise, you should document, in your records, the name and title of the person at the Federal Agency who provided the determination and the date that it was provided.

2. If the jobsite is identified as an area falling under "Exclusive Federal Jurisdiction" and you are an Agreement State licensee, submit a notification of proposed work (NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,"⁶ if available, a copy of the statement of jurisdiction from the agency to NRC. In lieu of submitting an NRC Form 241, Agreement State licensees may apply for a specific NRC license to operate in areas under NRC jurisdiction. If you are an NRC licensee, no action is required.
3. If the jobsite is identified as other than an area of "Exclusive Federal Jurisdiction," you should contact the Agreement State within which the facility exists.
4. If activity is being conducted by a contractor to a Federal Agency in an area identified as other than "Exclusive Federal Jurisdiction" within an Agreement State, then a copy of the contract should be provided to the Regional Office specified in NUREG-1556, Volume 19. The determination on whether a contractor shares in the federal government's sovereign immunity constitutes a legal conclusion which should be determined on a case-by-case basis only.

D. Any company proposing to work on Federally recognized Tribal lands, you should contact NMSS/MSST. Jurisdictional determinations on questions involving Federally recognized Tribal lands will be reviewed and handled on a case-by-case basis in accordance with Section V.C. of this guidance document.

E. An Agreement State licensee found to be involved in an area of exclusive federal jurisdiction without a prior NRC license or without prior filing for reciprocity in accordance with 10 CFR 150.20 is potentially subject to escalated enforcement action, including civil penalties and orders. However, NRC will not take enforcement action against an Agreement State licensee for such violations if the licensee has evidence that it received a determination from the Federal Agency that the area of work is not subject to exclusive federal jurisdiction. This evidence may be a written statement from the Federal Agency that provided the determination and the date that it was provided, or a written statement signed and dated by the licensee documenting the name and title of the person at the Federal Agency who provided the determination that the jobsite was not in an area of "Exclusive Federal Jurisdiction" and the date the determination was provided.

⁶ Current version of NUREG-1556, Volume 19 also provides further guidance on completing and submitting Form 241.

State Agreement Procedure (SA) 500 Jurisdiction Determination Interim Final DATE September 15, 2023

OFFICE	NMSS/MSST/SLPB	NMSS/MSST	NMSS/MSST/SLPB	NMSS/MSST/SMPB
NAME	AWhite	AW/KWilliams	KWAWhite	AGiantelli RJohnson for RJ
DATE	Aug 18, 2023	Sep 14, 2023	Sep 14, 2023	Sep 15, 2023

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