

# POLICY ISSUE NOTATION VOTE

October 15, 2008

SECY-08-0154

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: PROPOSED AGREEMENT BETWEEN THE COMMONWEALTH OF VIRGINIA AND THE COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

## PURPOSE:

To request Commission approval to publish the proposed Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) and a summary of the draft U.S. Nuclear Regulatory Commission (NRC) staff assessment of the Commonwealth's regulatory program in the *Federal Register* (FR) for public comment.

## BACKGROUND:

Section 274b of the Atomic Energy Act of 1954, as amended (Act) authorizes the Commission to enter into an Agreement with the Governor of a State providing for the discontinuance of the regulatory authority of the Commission with respect to certain materials. In 1981, the Commission adopted the revised policy statement entitled, "Criteria for Guidance of States and Nuclear Regulatory Commission (NRC) in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540; January 23, 1981), as amended by statements published on July 16, 1981 (46 FR 36969), and on July 21, 1983 (48 FR 33376), referred to hereafter as the "policy statement." The Office of Federal and State Materials and Environmental Management Programs Procedure SA-700, "Processing an Agreement," was subsequently adopted as an internal procedure for applying the policy statement to the processing of a new Agreement. The criteria and approaches in these documents form the basis for the staff's evaluation of the Commonwealth's request.

CONTACT: Monica L. Orendi, FSME/DMSSA  
301-415-3938

SECY NOTE: TO BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS AFTER DISPATCH OF LETTERS.

DISCUSSION:

By letter dated June 12, 2008, Governor Timothy M. Kaine requested that the Commission enter into an Agreement with the Commonwealth under Section 274b of the Act. The Governor requested that the Commission discontinue its regulatory authority for 11e.(1), 11e.(3), and 11e.(4) byproduct materials, source materials, and special nuclear materials not sufficient to form a critical mass, and allow Virginia to assume regulatory authority for such material under the Agreement.

Governor Kaine certified that the Commonwealth has a program for the control of radiation hazards that is adequate to protect public health and safety within the Commonwealth with respect to the materials covered by the proposed Agreement. The Governor further certified that the Commonwealth wishes to assume the regulatory responsibility for those materials. Copies of Governor Kaine's letter and Chairman Klein's response are enclosed (Enclosures 1 and 2, respectively).

The effective date of the Agreement proposed by the Commonwealth is March 31, 2009. Following the public comment period and the resolution of public comments, the NRC staff will be prepared to recommend that the Commission approve the proposed Agreement. The NRC staff will include an updated schedule (including a revised effective date for the Agreement, if appropriate), along with an analysis of the public comments, as part of the final paper to the Commission recommending approval of the Virginia Agreement request.

As required by Section 274e of the Act, the NRC staff will publish the proposed Agreement for comment in the *FR* once each week for four consecutive weeks. The *FR* Notice (Enclosure 3) will include a summary of the staff's draft assessment of the proposed Virginia regulatory program for regulation of 11e.(1), 11e.(3), and 11e.(4) byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass, in addition to the text of the proposed Agreement. The staff plans to follow the same process for Virginia as it did for Pennsylvania, Minnesota, Utah, Wisconsin, and Oklahoma. For these Agreements, the NRC staff published the proposed Agreements in the *FR* for public comment, in parallel with the Commission's review of the staff's draft assessment (Enclosure 4). Once approved by the Commission, the final Agreement will be published in the *FR* within 30 days after signature by the Chairman and the Governor.

The NRC staff's draft assessment of the Commonwealth's program covered seven subjects: objectives, radiation protection standards, prior evaluation of uses of radioactive material, inspection, enforcement, personnel, and administration. The NRC staff has concluded that the Commonwealth as defined by these subjects is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. However, it should be noted that one deficiency was found during the NRC staff's review. As a result of the restructuring of Commonwealth Regulations, the Virginia Department of Health (VDH) deleted financial assurance requirements equivalent to 10 CFR 40.36. VDH is proceeding with the necessary revisions to their regulations to ensure compatibility, and these revisions will be effective by January 1, 2009. Therefore, on the proposed effective date of the Agreement, the Commonwealth will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and

11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPA Act requirements. Under the proposed Agreement, the Commonwealth would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in the Commonwealth coincident with the effective date of the Agreement.

If the proposed Agreement is approved, it is estimated that there will be 420 total Commonwealth licenses. NRC would transfer 386 specific licenses to the Commonwealth's jurisdiction. In addition, the Commonwealth would retain regulatory authority for approximately 216 NARM licenses. Approximately 180 of these NARM licenses are dually regulated by the Commonwealth and the NRC.

#### RESOURCES:

The Commonwealth has a proposed effective date for the Agreement of March 31, 2009. NRC Region I has adequate resources budgeted within the Materials Users subprogram (Materials Licensing and Materials Inspection planned activities) to perform materials licensing, inspection, decommissioning, enforcement, allegation casework and transition activities related to the Commonwealth through all of Fiscal Year 2009, in the event that the March 31, 2009, date is not met.

#### CONCLUSION:

The NRC staff concludes that based on the draft assessment the Commonwealth satisfies the criteria in the Commission's policy statement, and therefore, would meet the requirements of Section 274 of the Act. The proposed Commonwealth program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

#### COMMITMENTS:

Listed below are the actions or activities committed to by the staff in this paper.

1. The staff will provide an updated schedule and an analysis of public comments along with the final paper to the Commission, requesting approval of the proposed Agreement.

#### RECOMMENDATIONS:

That the Commission:

1. Approve:

Publication of the *FR* Notice once each week for four consecutive weeks, as required by the Act.

2. Review:

The proposed Agreement between the Commonwealth and the NRC pursuant to Section 274 of the Act, and the draft of the NRC staff assessment of the Commonwealth

regulatory program, in parallel with the publication of the proposed Agreement in the FR.

3. Note:

- a. The staff will place a copy of the NRC Staff Draft Assessment (summarized in the *FR* Notice) in the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.html>, and into the Agency wide Documents Access and Management System.
- b. The Office of Congressional Affairs will dispatch a letter to the knowledgeable Congressional Committees informing them that the Commission is considering entering into an amended Agreement with the Commonwealth.
- c. The Office of Public Affairs will issue a press release.
- d. FSME will dispatch a letter to the Federal Agencies listed in FSME Procedure SA-700 and all of the States.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel, which has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection.

***/RA Bruce S. Mallett Acting for/***

R. W. Borchardt  
Executive Director  
for Operations

Enclosures:

1. Letter from Governor Kaine to Chairman Klein dated June 12, 2008
2. Acknowledgment Letter from Chairman Klein to Governor Kaine dated July 11, 2008
3. Draft *Federal Register* Notice, including the Summary of the Draft Staff Assessment and the Proposed Agreement
4. Draft NRC Staff Assessment of the Proposed Virginia Byproduct Materials Program

EDO Principal Correspondence Control

FROM: DUE: / / EDO CONTROL: G20080414  
DOC DT: 06/12/08  
FINAL REPLY:

Timothy M. Kaine  
Commonwealth of Virginia

TO:  
Chairman Klein

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 08-0344

DESC: ROUTING:  
Request for Agreement Between NRC and the  
Commonwealth of Virginia (EDATS: SECY-2008-0360)  
Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Cyr/Burns  
Reyes, RII  
Campbell, OEDO

DATE: 06/19/08

ASSIGNED TO: CONTACT:  
FSME Miller

SPECIAL INSTRUCTIONS OR REMARKS:  
For Appropriate Action.

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** SECY-2008-0360

**Source:** SECY

## General Information

**Assigned To:** FSME

**OEDO Due Date:** NONE

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** Request for Agreement Between the NRC and the Commonwealth of Virginia

**Description:**

**CC Routing:** Region II

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20080414, LTR-08-0344

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** Appropriate Action

**Priority:** Medium

**Signature Level:** No Signature Required

**Sensitivity:** None

**Urgency:** NO

**OEDO Concurrence:** NO

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:** For Appropriate Action.

## Document Information

**Originator Name:** Timothy M. Kaine

**Date of Incoming:** 6/12/2008

**Originating Organization:** Commonwealth of Virginia

**Document Received by SECY Date:** 6/18/2008

**Addressee:** Chairman Klein

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

Date Printed: Jun 18, 2008 16:21

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**PAPER NUMBER:** LTR-08-0344 **LOGGING DATE:** 06/18/2008  
**ACTION OFFICE:** EDO

**AUTHOR:** Dale Kaine  
**AFFILIATION:** VA-GOV  
**ADDRESSEE:** Dale Klein  
**SUBJECT:** Request that an agreement be established between the NRC and the Commonwealth of Virginia regarding regulatory authority for radioactive materials .....

**ACTION:** Appropriate  
**DISTRIBUTION:** RF... enclosures available in FSME (M. Orendi)

**LETTER DATE:** 06/12/2008  
**ACKNOWLEDGED** No  
**SPECIAL HANDLING:** Made publicly available in ADAMS via EDO/DPC

**NOTES:**  
**FILE LOCATION:** ADAMS

**DATE DUE:** **DATE SIGNED:**

EDO --G20080414



# COMMONWEALTH of VIRGINIA

## Office of the Governor

Timothy M. Kaine  
Governor

June 12, 2008

The Honorable Dale E. Klein, Chairman  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Klein:

I am writing to formally request that an agreement be established between the United States Nuclear Regulatory Commission and the Commonwealth of Virginia as authorized under Section 274b of the Atomic Energy Act of 1954 (herein referred to as the Act), as amended and the Virginia Statutes Section 32.1-235.

Under this agreement the U.S. Nuclear Regulatory Commission will discontinue certain regulatory authority for radioactive materials now under federal jurisdiction and that authority will be assumed by the Commonwealth of Virginia. As provided by Virginia Statutes Section 32.1-228.1, the Virginia Department of Health is the agency responsible for the implementation of the agreement. The specific authority requested is for the following:

- A. By-product materials as defined in Section 11e. (1) of the Act;
- B. By-product materials as defined in Section 11e. (3) of the Act;
- C. By-product materials as defined in Section 11e. (4) of the Act;
- D. Source materials; and
- E. Special nuclear materials in quantities not sufficient to form a critical mass.

The Commonwealth of Virginia at this time is not requesting authority to regulate the extraction or concentration of source material from source material ore and the

The Honorable Dale E. Klein

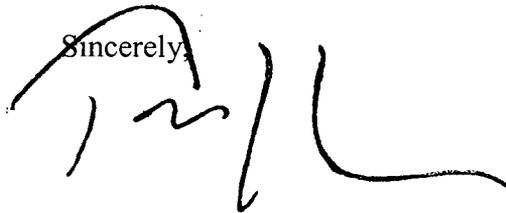
June 12, 2008

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management and disposal of the resulting byproduct material; land disposal of byproduct, source, or special nuclear material waste received from other persons; or the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

I certify that the Commonwealth of Virginia desires to assume regulatory authority and oversight responsibility for such materials listed above, and that the Commonwealth of Virginia has an adequate program for the control of radiation hazards covered by this proposed agreement. Enclosed is the formal application, which contains information as required by the Office of Federal and State Materials and Environmental Management Programs (FSME) procedure; SA-700 'Processing an Agreement'.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. M. Kaine', with a long horizontal flourish extending to the right.

Timothy M. Kaine

July 11, 2008

The Honorable Timothy M. Kaine  
Governor of Virginia  
Richmond, Virginia 23219

Dear Governor Kaine:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of June 12, 2008, in which you request an agreement between the NRC and the Commonwealth of Virginia pursuant to Section 274b of the Atomic Energy Act of 1954, as amended. If approved by the Commission, Virginia would assume regulatory authority over the acquisition, possession, use, transfer, and disposal of source material, byproduct material as defined in Section 11e.(1) of the Act, byproduct material as defined in Section 11e.(3) of the Act, byproduct material as defined in Section 11e.(4) of the Act, and special nuclear material in quantities not sufficient to form a critical mass.

As required by the Act, the NRC staff is conducting an assessment of the compatibility of the Virginia program with the NRC's program and the adequacy of Virginia's program to protect public health and safety with respect to the materials covered by the proposed agreement. This process, which assumes a complete application, generally takes 52 weeks. I want to assure you that the NRC staff is working diligently to complete its review in an expeditious manner.

If the Commission approves the proposed agreement, the NRC will publish the text and a summary of its assessment in the *Federal Register* for public comment. The Act requires that the proposed agreement be published once each week for four consecutive weeks. A press release concerning the Commonwealth's request will also be issued at that time. After the expiration of the comment period, the Commission will consider any comments received and make a final decision on the request. You will be notified promptly of our decision, and the NRC staff will coordinate with Virginia's staff to establish an effective date for the agreement.

The Commission welcomes the Commonwealth's interest in becoming an Agreement State and looks forward to the continued excellent relationship that the NRC and the Commonwealth of Virginia have enjoyed in the past.

Sincerely,

/RA/

Dale E. Klein

NUCLEAR REGULATORY COMMISSION

Commonwealth of Virginia: NRC Staff Assessment of a Proposed Agreement  
Between the Nuclear Regulatory Commission and the Commonwealth of Virginia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Virginia.

SUMMARY: By letter dated June 12, 2008, Governor Timothy M. Kaine of Virginia requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth of Virginia (Commonwealth or Virginia) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would give up, and the Commonwealth would take over, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Commonwealth's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Commonwealth's program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in the Commonwealth from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that

the pertinent exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires (30 days after date of FIRST publication). Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555-0001. Comments may be submitted electronically at [nrcprep.resource@nrc.gov](mailto:nrcprep.resource@nrc.gov).

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397-4209, or (301) 415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O-1-F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Virginia including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624, ML082470314, and ML082520075.

FOR FURTHER INFORMATION CONTACT: Ms. Monica L. Orendi, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-3938 or e-mail to [monica.orendi@nrc.gov](mailto:monica.orendi@nrc.gov).

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 35 States. The Agreement States currently regulate approximately 18,000 Agreement material licenses, while the NRC regulates approximately 4,000 licenses. Under the proposed Agreement, approximately 400 NRC licenses will transfer to the Commonwealth. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the *Federal Register* for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

## I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials<sup>1</sup> and activities that involve use of the materials.

In a letter dated June 12, 2008, Governor Kaine certified that the Commonwealth of Virginia has a program for the control of radiation hazards that is adequate to protect public health and safety within Virginia for the materials and activities specified in the proposed

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<sup>1</sup>The radioactive materials, sometimes referred to as “Agreement materials,” are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(3) of the Act; (c) byproduct materials as defined in Section 11e.(4) of the Act; (d) source materials as defined in Section 11z. of the Act; and (e) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the “categories of materials”) that the Commonwealth requests authority over are:

- (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;
- (2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;
- (3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;
- (4) The possession and use of source materials; and
- (5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the Commonwealth and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;

- Provide for the suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Virginia.

(c) The regulatory program is authorized by law under the Code of Virginia (32.1-227 – 32.1-238). Section 32.1-235 provides the Governor with the authority to enter into an Agreement with the Commission. Virginia law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the Commonwealth. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Commonwealth licenses until the licenses expire or are replaced by Commonwealth issued licenses. NRC licenses transferred to the Commonwealth which contain requirements for decommissioning and express intent to terminate the license when decommissioning has been completed under a Commission approved decommissioning plan will continue as Commonwealth licenses and will be terminated by the Commonwealth when the Commission approved decommissioning plan has been completed.

The Commonwealth currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The Energy Policy Act of 2005 (EPAAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of

the EPAAct requirements. Under the proposed Agreement, the Commonwealth would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in the Commonwealth coincident with the effective date of the Agreement. Also, a notification of waiver termination would be provided in the *Federal Register* for the final Agreement.

(d) The NRC draft staff assessment finds that the Commonwealth's Division of Radiological Health, an organizational unit of the Virginia Department of Health (VDH), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

## II. Summary of the NRC Staff Assessment of the Commonwealth's Program for the Control of Agreement Materials

The NRC staff has examined the Commonwealth's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's 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 by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700, "Processing an Agreement."

(a) Organization and Personnel. The Agreement materials program will be located within the existing Division of Radiological Health (DRH) of the VDH. The DRH will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DRH staff members are specified in the Commonwealth's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. All have had additional training and work experience in radiation protection. Supervisory level staff has at least 7 years working experience in radiation protection.

The DRH performed and the NRC staff reviewed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the DRH's staff analysis, the DRH has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The DRH will employ a staff with at least the equivalent of 6.0 full-time professional/technical and administrative employees for the Agreement materials program.

The Commonwealth has indicated that the DRH has an adequate number of trained and qualified staff in place. The Commonwealth has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff are working with NRC license reviewers in the NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Virginia. DRH staff is also actively supplementing their experience through direct meetings, discussions, and facility walk-downs with NRC licensees in the Commonwealth, and through self-study, in-house training, and formal training.

Overall, the NRC staff believes that the DRH technical staff identified by the Commonwealth to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the

evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the Virginia Board of Health by Section 32.1-229 of the Code of Virginia, the DRH has the requisite authority to promulgate regulations for protection against radiation. The law provides DRH the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the Commonwealth adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into Virginia Administrative Code Title 12, Section 5-481. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain Commonwealth licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA-05-090 and EA-07-305) to these licensees that will transfer to the Commonwealth. As a result of the restructuring of Virginia Regulations, the Commonwealth deleted financial assurance requirements equivalent to 10 CFR 40.36. The Commonwealth is proceeding with the necessary revisions to their regulations to ensure compatibility, and these revisions will be effective by January 1, 2009. Therefore, on the proposed effective date of the Agreement, the Commonwealth will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the Commonwealth will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The Commonwealth has adopted NRC compatible requirements for the handling and storage of radioactive material. The Commonwealth will not seek authority to regulate the land disposal of radioactive material as waste. The Commonwealth waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by Commonwealth licensees for transfer for disposal to an authorized waste disposal site or broker.

(d) Transportation of Radioactive Material. Virginia has adopted compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Virginia will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The Commonwealth has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. The Commonwealth has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The Commonwealth has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Commonwealth has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The Commonwealth has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Commonwealth is bound by requirements specified in Commonwealth law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Commonwealth law prescribes standards of ethical conduct for Commonwealth employees.

(i) Cooperation with Other Agencies. Commonwealth law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by the Commonwealth. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions required by 10 CFR 20.1403 prior to the effective date of the proposed Agreement, the Commonwealth deems the termination to be final despite any other provisions of Commonwealth law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will

be terminated by the Commonwealth under the plan so long as the licensee conforms to the approved plan.

The Commonwealth also provides for “timely renewal.” This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Code of Virginia provides exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

### III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of section 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Virginia in the application for an Agreement submitted by Governor Kaine on June 12, 2008, and the supporting information provided by the staff of the DRH of the Virginia Department of Health, and concludes that the Commonwealth of Virginia satisfies the criteria in the 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 therefore, meets the requirements of Section 274 of the Act. The proposed Commonwealth of Virginia program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this [ ] day of [month], 2008.

For the Nuclear Regulatory Commission.

Robert J. Lewis, Director  
Division of Materials Safety  
and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

AN AGREEMENT  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND  
THE COMMONWEALTH OF VIRGINIA  
FOR THE  
DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY  
AND  
RESPONSIBILITY WITHIN THE COMMONWEALTH PURSUANT TO  
SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 *et seq.* (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, The Governor of the Commonwealth of Virginia is authorized under the Code of Virginia Section 32.1-235, to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the Commonwealth of Virginia certified on June 12, 2008, that the Commonwealth of Virginia (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the provisions of the Act;

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

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the

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

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass.

## ARTICLE II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act;
7. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other person

### ARTICLE III

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

### ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

### ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

### ARTICLE VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible.

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

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

### ARTICLE VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ARTICLE VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Richmond, Virginia] this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR  
REGULATORY COMMISSION

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Dale E. Klein, Chairman

FOR THE COMMONWEALTH OF VIRGINIA

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Timothy M. Kaine, Governor

## DRAFT ASSESSMENT

of the proposed

### VIRGINIA PROGRAM FOR THE REGULATION OF AGREEMENT MATERIALS

as described in the

### REQUEST FOR AN AGREEMENT

This Assessment examines the proposed Commonwealth of Virginia (Commonwealth of Virginia) Program with respect to the ability of the program to regulate the possession, use, and disposal of radioactive materials subject to the Atomic Energy Act of 1954 (Act), as amended.<sup>1</sup> This Assessment was performed using the criteria in the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to below as the "criteria")<sup>2</sup> using the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-700 "Processing an Agreement". Each criterion, and the staff assessment related thereto, is addressed separately below.

#### OBJECTIVES

1. Protection. **A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.**

The proposed Agreement State Program for the Commonwealth, regulating radioactive materials, would be located in the Division of Radiological Health (DRH), in the Office of Epidemiology, which is an organizational unit in the Virginia Department of Health, Office of Public Health (VDH). The VDH is designated by law to be the Commonwealth's radiation control agency. The authorities to issue, amend, suspend or revoke licenses; place conditions and to issue orders; or assess administrative fines is vested by Statute in the VDH.

Although by law, certain authority for regulating radioactive material is delegated to the Virginia Board of Health, the Commissioner for Public Health is vested with all the authority of the Board when it is not in session. The Commissioner for Public Health is the head of the VDH and can then delegate these responsibilities to the appropriate Division. The Commissioner has delegated these responsibilities to the DRH.

The NRC staff verified that the Commonwealth's Radiation Protection Program design for distributing regulatory responsibilities to the program staff is similar to designs used

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<sup>1</sup>According to paragraph (a) of Section 274, the radioactive materials subject to the Act are byproduct, source and special nuclear materials.

<sup>2</sup>NRC Statement of Policy published in the Federal Register, January 23, 1981 (46 FR 7540-7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register, July 21, 1983 (48 FR 33376).

successfully in other Agreement States, and that all necessary program elements have been addressed.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

## RADIATION PROTECTION STANDARDS

2. **Standards. The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.**

In conjunction with the rulemaking authority vested in the Virginia Board of Health by Virginia Statute 32.1-229 of the Code of Virginia, VDH has the requisite authority to promulgate rules for protection against radiation.

The NRC staff verified that the VDH adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150 into Commonwealth Regulations Title 12 Section 5-481, Radiation Protection Regulations. Therefore, VDH has adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

Therefore, the staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority and Program Organization, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

3. **Uniformity of Radiation Standards. It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.**

The Commonwealth, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act, as amended. The NRC staff verified that the Commonwealth adopted regulations compatible with 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Virginia Statutes: 32.1-2, 32.1-16, 32.1-19, 32.1-20, 32.1-228, 32.1-228.1, 32.1-229, 32.1-229.3. Commonwealth Regulations 12 VAC 5-481.

4. Total Occupational Radiation Exposure. **The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.**

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Part 20, including Subpart C, the occupational dose limits and Subpart D, the dose limits to individual members of the public. Commonwealth licensees are required to consider the radiation doses to individuals from all sources of radiation, except background radiation and radiation from medical procedures. Like NRC licensees, Commonwealth licensees are required to consider the radiation dose whether the sources are in the possession of a licensee or not.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

5. Surveys, Monitoring. **Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.**

NRC requires surveys and monitoring pursuant to Subpart F of 10 CFR Part 20. The NRC staff review verified that the Commonwealth has adopted regulations compatible with 10 CFR Part 20 Subpart F. Therefore, Commonwealth licensees are required to conduct surveys and personnel monitoring to the same standards required of NRC licensees.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

6. Labels, Signs, Symbols. **It is desirable to achieve uniformity in labels, signs and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.**

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in Subpart J of 10 CFR Part 20. Therefore, the radiation labels, signs and symbols, and the posting and labeling requirements in the Commonwealth regulations are compatible with those contained in the NRC regulations.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

7. **Instruction. Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.**

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations 10 CFR Part 19.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

8. **Storage. Licensed radioactive material in storage shall be secured against unauthorized removal.**

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in Subpart I of 10 CFR Part 20.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

9. **Radioactive Waste Disposal. (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority. Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR 20. The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.**

The NRC staff review confirmed that the Commonwealth has adopted regulations that are compatible with the NRC regulations in Subpart K of 10 CFR Part 20 - Waste Disposal. These regulations deal with general requirements for waste disposal including waste classification, transfer, and waste manifests and are applicable to all licensees.

The staff therefore concludes that Criterion 9(a) is satisfied.

**(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons, which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).**

The NRC staff review confirmed that the Commonwealth is not seeking authority to regulate the land disposal of low-level radioactive waste. Therefore, Criterion 9(b) does not apply to the Commonwealth.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

10. **Regulations Governing Shipment of Radioactive Materials. The State shall, to the extent of its jurisdiction, promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U. S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.**

The NRC staff verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Part 71. The Commonwealth's regulations specifically exempt areas of exclusive NRC jurisdiction.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

11. **Records and Reports. The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the**

receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The NRC staff review verified that the Commonwealth has adopted regulations compatible with the NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61 70, 71, and 150. The records and reports referenced in Criterion 11 are regulatory requirements in these parts. The Commonwealth has adopted the necessary record and reporting requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

12. Additional Requirements and Exemptions. **Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.**

The NRC staff has verified that the Commonwealth has adopted a regulation which is compatible with 10 CFR 30.34, Terms and conditions of licenses, in 12 VAC 5-481-500. The Commonwealth regulations provide the radiation control agency authority to impose, by order or license condition, additional health and safety requirements beyond the requirements specified in law and the rules. The agency also has legal authority to grant reasonable and necessary exceptions to the regulatory requirements, either by order or by license condition.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

#### PRIOR EVALUATION OF USES OF RADIOACTIVE MATERIALS

13. Prior Evaluation of Hazards and Uses, Exceptions. **In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards, and the capability of the user or possessor prior to his receipt of materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to**

**which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the processor and user. These categories fall into two groups: those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating specific use.**

The Commonwealth has adopted regulations containing regulatory requirements for applying for and issuing licenses, which are compatible with NRC's regulations.

The NRC staff review confirmed that the Commonwealth's regulations provide that a license authorizing the distribution of agreement materials that will subsequently be exempt from regulatory control may only be issued by the NRC.

Since Criterion 13 was adopted, the Commission has determined that the regulatory authority to conduct safety evaluations of sealed sources and devices may be retained by the NRC, unless the State requests assumption of the authority and has in place an adequate and compatible program to implement the authority. The Commonwealth has decided not to seek authority for evaluation of sealed sources and devices.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

14. **Evaluation Criteria. In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing regulatory guides for various categories of licensed activities.**

The NRC staff review determined that the Commonwealth has established a series of checklists, regulatory guides, licensing procedure guides and a set of applicable forms. The Commonwealth has developed a series of regulatory guides for use by license applicants. The NRC staff determined that the licensing procedure guides cover the handling of license applications from the point of submittal through issuance of the completed license. The Commonwealth licensing procedures are similar to NRC's procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and

the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

15. **Human Use. The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.**

The NRC staff verified that the Commonwealth has adopted compatible regulations to the NRC regulations in 10 CFR Part 35. Therefore the Commonwealth's regulations include training and experience requirements for use of radioactive material which are equivalent to the NRC requirements.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

#### INSPECTION

16. **Purpose, Frequency. The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.**

The NRC staff confirmed that the Commonwealth has statutory authority to conduct inspections of licensees. The Commonwealth has adopted regulations compatible with equivalent parts of the NRC regulations containing provisions relating to inspections and tests.

The Commonwealth has adopted a schedule for inspection of licensees at least as frequent as the schedule used by NRC. The Program staff has developed internal procedures and accompanying forms for the inspection areas which cover scheduling, preparation, performance basis, tracking and documentation of inspection results. The inspection procedures are similar to NRC procedures.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

17. **Inspections Compulsory. Licensees shall be under obligation by law to provide access to inspectors.**

The NRC staff review confirmed that Commonwealth law provides authority for radiation control Program inspectors to enter public or private property at all reasonable times for the purpose of investigating conditions related to radiation use. The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

18. Notification of Results of Inspection. **Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.**

The NRC staff review determined that the Commonwealth has adopted procedures to convey a copy of the formal inspection report to the licensees, both when violations are found, and when no violations are found. The procedures identify the staff responsible and specify the time limit for preparing the inspection report, the process for management review and approval, and provide instructions for distribution of the report to the licensee and to the Commonwealth's official files.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

#### ENFORCEMENT

19. Enforcement. **Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.**

The NRC staff review confirmed that the Commonwealth is authorized by law to enforce the Commonwealth's regulations using a variety of sanctions, including the imposition of administrative fines, the issuance of orders to suspend, modify or revoke licenses, and any other action deemed appropriate by the Program. The Program may assess civil penalties in accordance with Commonwealth Law and Department regulations.

The Program has adopted policies and procedures to implement the enforcement authority. The Commonwealth enforcement procedures are similar to the NRC procedures with regard to the use of severity levels for violations.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related

correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

## PERSONNEL

20. **Qualifications of Regulatory and Inspection Personnel. The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspections of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments (their selection, use and calibration), laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants of other State agencies with expertise in geology, hydrology, water quality, radiobiology and engineering disciplines.**

**To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life science, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training - radiation protection.**

**It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which are out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.**

**The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in the field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs.**

**As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.**

**It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.**

Based on the review of the organizational charts and position descriptions for the VDH, the VDH training and qualification plan, and the curricula vitae for the current staff members, the NRC staff concludes that the VDH has a staffing plan that provides a sufficient number of adequately trained and qualified technical staff.

a. Assessment of the Agreement Materials Staffing

There are 386 NRC specific licenses in the Commonwealth. The Commonwealth currently conducts a licensing and inspection program for naturally occurring or accelerator-produced radioactive material (NARM) users. There are approximately 216 NARM licenses in the Commonwealth. Approximately 180 of the NARM licenses are dually licensed by the Commonwealth and the NRC. It is estimated that there will be approximately 420 total Commonwealth licenses.

The staff of the Radioactive Materials Program (RMP) will be responsible for implementing the Agreement State Materials Program. The Commonwealth staffing plan allocates nine staff to the materials program. This includes six Radiation Safety Specialists for licensing and inspection, one Supervisor, and two Program Support Staff. Currently there are four licensing and inspection staff and the RMP supervisor in place. Additionally, one full-time equivalent (FTE) program support staff is available in the business unit. Radiation Safety Specialists will be utilized in all aspects of the materials program. They will perform inspections, conduct licensing reviews, and participate in enforcement activities. The Radiation Safety Specialists will devote one hundred percent of their time to the agreement state program. One hundred percent of the RMP supervisor's time will also be devoted to the Agreement State program. That time will be divided among various duties, including management review of licensing and inspection actions, personnel responsibilities, rules development, inspector accompaniments, general supervision, and other management duties.

Based on the RMP staffing allocation of nine technical, supervisory and administrative FTE for the agreement state program, and subtracting the two Radiation Safety Specialists and one Program Assistant that will be requested for hire in FY 2009, the technical, supervisory, and administrative staffing level devoted to the agreement state program is 6 FTE. The Review Team's evaluation of the State's staffing analysis concludes that adequate staffing exists for the RMP without the two additional Radiation Safety Specialists and one additional Program Assistant.

The two additional Radiation Safety Specialist FTE and one Program Assistant FTE that will be added to the RMP at a later date will provide extra strength and flexibility to the RMP.

The Commonwealth's estimate of approximately 420 licensees has resulted in an RMP estimate that the current RMP staff of six FTE is adequate for transition to becoming an Agreement State. This projection is based on data from the NRC Region I Office. This level of staffing should allow for keeping the inspection program and licensing program current. Based on the workload analysis, NRC staff concludes that the four Radiation Safety Specialists and RMP Supervisor along with the Program Support Staff provides an adequate level of staffing to handle anticipated licensing, inspection, allegations, and incident response workload satisfactorily.

The staff concludes that the proposed RMP has an adequate number of staff to transition to and meet the anticipated needs of the Agreement State Program.

The staff concludes that criterion 20(a) is satisfied.

b. Assessment of Staff Qualifications

The NRC staff review considered the qualifications of the individuals currently on the RMP's staff that would be involved in the Agreement State Materials Program and the procedures for training and qualifying new staff members. Under the proposed Agreement, the RMP Supervisor would direct the Agreement State Materials Program and would be primarily responsible for the Program's administration and will provide the immediate day-to-day supervision of the Agreement State Materials Program. This individual holds a bachelors degree in Business. He has over 14 years experience in health physics and supervision. He has 8 years Agreement State materials program experience, including experience in an Agreement State materials program from another state, and 6 years of radiological experience in the U.S. Navy.

Based on the NRC staff review, all of the non-supervisory technical staff members have at least a bachelor's degree in a physical or life science. One staff member has a bachelor's degree in environmental studies, one staff member has a bachelor's degree in chemistry, one staff member has a bachelor's degree in environmental health, and the remaining staff member has a master's degree in physics.

The RMP's technical staff has significant health physics and radiation science experience. This includes work in health physics at state regulatory agencies, the military and private industry. RMP technical staff has completed or are scheduled to complete the NRC recommended core courses, or have received waivers from the RMP supervisor in accordance with RMP training procedures, based on their prior training and experience.

RMP technical staff has accompanied NRC staff on inspections of NRC licensees in the Commonwealth. Additionally, the RMP staff has been inspecting and processing licensing actions for NARM users in the Commonwealth; performing approximately 80 inspections and processing approximately 150 licensing actions annually. Several of the technical staff have licensing and/or inspection experience from prior employment in other Agreement State materials programs.

NRC staff believes that the RMP technical staff identified by the Commonwealth to participate in the Agreement State Materials Program are trained in accordance with the RMP plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and techniques of inspecting licensed users of radioactive materials.

The NRC staff concludes that the proposed RMP has a sufficient number of adequately trained staff to transition to the Agreement State Materials Program and to meet program needs.

The staff concludes that criterion 20(b) is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Program Organization and Staff Descriptions, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314).

21. Conditions Applicable to Special Nuclear Material, Source Material and Tritium. **Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms, (1) transfers of special nuclear material, source material and tritium, and (2) periodic inventory data.**

The NRC staff review did not note any aspects of the RMP that could potentially interfere with duties imposed on a holder of materials by the NRC. In addition, the Commonwealth's regulations specifically exempt areas of exclusive NRC or other Federal jurisdiction from Commonwealth regulation. The staff is therefore satisfied that the RMP will not interfere with duties imposed on the holder of materials by the NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

22. Special Nuclear Material Defined. **Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:**

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams PU)}}{200} = 1$$

The NRC staff determined that the Commonwealth's definition of special nuclear material in quantities not sufficient to form a critical mass in 12 VAC 5-481-10, is compatible with that of the Commission's.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Regulations 12 VAC 5-481.

#### ADMINISTRATION

23. Fair and Impartial Administration. **State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:**
- a. **Formulation of rules of general applicability;**
  - b. **Approving or denying applications for licenses or authorization to process and use radioactive materials; and**
  - c. **Taking disciplinary actions against licensees.**

The NRC staff review confirmed that the VDH is bound by general statutory provisions with respect to providing the opportunity for public participation in rulemaking, licensing actions, and disciplinary actions. These general statutory provisions also apply to the protection of personnel radiation exposure records from public disclosure, maintaining the confidentiality of allegeders, and administrative and judicial requirements for requesting and holding hearings on enforcement matters.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27.

24. State Agency Designation. **The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.**

The NRC staff determined that the VDH is designated by VA Statute 32.1-228.1 to be the lead agency for the carrying out the terms of the proposed Agreement, which will assure against duplicate regulations or licensing by Commonwealth and local authorities. In addition, to the extent that this criterion deals with duplicate regulation between a State and the NRC (see FSME Procedure SA-700 Handbook, Evaluation Criteria 4.1.1.2., paragraph b, and 4.2.2.2), the staff determined that the RMP, which specifically excludes from Commonwealth regulation any areas in which the jurisdiction of the NRC or another Federal agency is exclusive, gives sufficient assurance against

duplicate regulation between the Commonwealth and the NRC in the regulation of agreement material.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27.

25. Existing NRC Licenses and Pending Applications. **In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State Law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.**

The NRC staff review confirmed that Commonwealth Statute 32.1-229.3(B) contains a provision that provides for recognition of existing NRC and Agreement State licenses. Commonwealth regulation 12 VAC 5-481-550 recognizes NRC licenses while 12 VAC 5-481-590 provides a process for recognition of other Agreement State licenses.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, Section on Statutory Authority, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes: 2.2-4000 – 2.2-4031, 32.1-227 – 32.1-238, 32.1-2 – 32.1-20, 32.1-27. Commonwealth regulations 12 VAC 5-481.

26. Relations with Federal Government and Other States. **There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.**

The NRC staff review verified that the proposed Agreement commits the Commonwealth to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the RMP will continue to be compatible with the NRC's program for the regulation of agreement materials.

In a revised Policy Statement on Adequacy and Compatibility of Agreement State Programs (published September 3, 1997 at 62 FR 46517), the Commission determined that providing reports to NRC of Agreement State licensee incidents, accidents and other significant events is a matter of compatibility. The Commonwealth has adopted procedures to provide such reports to NRC.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes 32.1-229. Commonwealth regulations 12 VAC 5-481.

27. **Coverage, Amendments, Reciprocity. An 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, as contemplated by Public Law 86-373 and Public Law 95-604:**

- a. **Byproduct material as defined in Section 11e(1) of the Act,**
- b. **Byproduct material as defined in Section 11e(2) of the Act,**
- c. **Source material,**
- d. **Special nuclear material in quantities not sufficient to form a critical mass,**
- e. **Low-level wastes in permanent disposal facilities, as defined by statute or Commission rules or regulations containing one or more of the materials stated in a, c, and d above but not including byproduct material as defined in Section 11e(2) of the Act;**

**but must relate to the whole of such category or categories and not to a part of any category. If less than the five categories are included in any discontinuance of jurisdiction, discontinuance of NRC regulatory authority and the assumption of regulatory authority by the State of the others may be accomplished subsequently by an amendment or by a later Agreement.**

**Arrangements should be made for the reciprocal recognition of State licenses and NRC licenses in connection with out-of-jurisdiction operations by a State or NRC licensee.**

The NRC staff review verified that the proposed Agreement provides for the Commission to relinquish, and the Commonwealth to assume, regulatory authority over the types of material defined in categories a, c, and d above.

Since this criterion was adopted, the Commission has determined that the Agreement States may assume the authority to evaluate the safety of sealed sources and devices to be distributed in interstate commerce as a separate portion of the Agreement, or to allow NRC to retain that authority. The Commonwealth has chosen not to assume that authority.

The proposed Agreement stipulates the desirability or reciprocal recognition of NRC and other Agreement State licenses, and commits the Commission and the Commonwealth

to cooperate to accord such reciprocity. The Commonwealth's regulations provide for the reciprocal recognition of licenses from other jurisdictions.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Commonwealth Statutes 32.1-227, 32.1-238. Commonwealth Regulations 12 VAC 5-481.

28. **NRC and Department of Energy Contractors. The State should provide exemptions for NRC and DOE contractors which are substantially equivalent to the following exemptions:**
- a. **Prime contractors performing work for the DOE at U.S. Government-owned or controlled site;**
  - b. **Prime contractors performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof;**
  - c. **Prime contractors using or operating nuclear reactors or other nuclear devices in a U.S. Government-owned vehicle or vessel; and**
  - d. **Any other prime contractor or subcontractor of DOE or NRC when the State and the NRC jointly determine (i) that, under the terms of the contract or subcontract, there is adequate assurance that the work there under can be accomplished without undue risk to the public health and safety; and (ii) that the exemption of such contractor or subcontractor is authorized by law.**

The NRC staff review verified that the Commonwealth has adopted compatible regulations to NRC regulations in 10 CFR Parts 30, 40 and 70 including §30.12, §40.11, and §70.11 wherein the specified exemptions are contained. The NRC staff concludes that the Commonwealth regulations do provide for exemptions from the State's requirements for licensing of sources of radiation for NRC and DOE contractors or subcontractors in accordance with the criterion.

The staff concludes that this criterion is satisfied.

References: Letter dated June 12, 2008, from Governor Kaine to Chairman Klein, request for an Agreement, and additional related correspondence between the NRC and the State (ADAMS: ML081720184, ML081760524, ML081760523, ML081760623, ML081760624 and ML082470314). Virginia regulations 12 VAC 5-481.

#### STAFF CONCLUSION

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth in the application for an Agreement in letter dated June 12, 2008, from Governor Kaine to Chairman Klein, and the supporting information provided by the staff of the VDH.

Section 274d. of the Act provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

- (a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and
- (b) The Commission finds that the State program is in accordance with the requirements of Section 274o. and in all other respects compatible with the NRC's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The staff concludes that:

On the basis of this Assessment, the Commonwealth of Virginia meets the requirements of the Act. The RMP, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the NRC and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.