



POLICY ISSUE **(Notation Vote)**

August 29, 2019

SECY-19-0085

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: SECTION 274b. AGREEMENT WITH THE STATE OF VERMONT

PURPOSE:

To request Commission approval of the proposed Agreement with the State of Vermont (Vermont or State).

BACKGROUND:

On April 11, 2019, Governor Philip B. Scott of Vermont requested that the Commission enter into an Agreement with the State under Section 274b. of the Atomic Energy Act of 1954 (AEA), as amended (the Act). In SECY-19-0058, "Proposed Agreement Between the State of Vermont and the Commission Pursuant to Section 274 of the AEA, as Amended" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19115A212), the staff presented a draft of its assessment of the Vermont Agreement State program.

The Commission approved the staff's recommendation to proceed with processing the application for the Vermont Agreement State program in a Staff Requirements Memorandum dated June 17, 2019, titled "Staff Requirements - SECY-19-0058 - Proposed Agreement Between the State of Vermont and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended" (ADAMS Accession No. ML19169A109).

CONTACT: Duncan White, NMSS/MSST
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As required by Section 274e. of the Act, the U.S. Nuclear Regulatory Commission (NRC) staff published the proposed Agreement for public comment in the *Federal Register* (FR) on June 25, 2019 (84 FR 29811), July 2, 2019 (84 FR 31518), July 9, 2019 (84 FR 32657), and July 16, 2019 (84 FR 33864). The comment period ended on July 25, 2019. The NRC also made the full text of the draft staff assessment available in ADAMS and the Public Electronic Reading Room.

The proposed Agreement (Enclosure 1) will allow the State of Vermont to assume regulatory authority for byproduct materials as defined in Sections 11e.(1), 11e.(3), and 11e.(4) of the Act; source materials; and special nuclear materials not sufficient to form a critical mass. The State of Vermont is not seeking authority for the possession and use of byproduct material as defined in Section 11e.(2) of the Act; regulation of land disposal of byproduct material, source material, or special nuclear material waste received from other persons; or the evaluation of sealed sources and devices manufactured in the State and distributed in interstate commerce.

DISCUSSION:

Staff Assessment

Based on the staff's final assessment (Enclosure 2) of the Vermont Agreement State program, the staff concluded that the State of Vermont satisfies the Commission's policy statement¹ and therefore meets the requirements of Section 274 of the Act.

Public Comments

The *Federal Register* Notice requested comments regarding: (1) the proposed Agreement and its effect on public health and safety; (2) the staff's draft assessment of the Vermont Agreement State program; and (3) the adequacy of the Vermont Agreement State program and the State of Vermont radiation program staff. In addition to the *Federal Register* Notice, the staff sent letters requesting comments to Vermont Tribes (ADAMS Accession Nos. ML19142A263 and ML19144A180), federal agencies (ADAMS Accession Nos. ML19192A040), and all States and the State Liaison Officers (ADAMS Accession No. ML19136A091). The NRC received only one comment submission, a letter from the Organization of Agreement States (ADAMS Accession No. ML19211D512) in support of the Agreement. Staff evaluation of the comments received in that letter resulted in no change in the proposed Agreement or the staff's conclusions in the draft staff assessment of the State's program.

Transfer of Licenses

Under the Agreement, the NRC would transfer 36 academic, commercial, and medical licenses to the State of Vermont. The staff is working closely with Vermont's staff to ensure a smooth transition of current and pending licensing, inspection, and enforcement activities involving the licenses to be transferred. The staff is working to ensure that any major licensing actions are completed before the transfer. In the event a major licensing action is not completed before the transfer, the staff will ensure the transfer to the State of Vermont will occur in an orderly fashion.

¹ "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," published January 23, 1981 (46 FR 7540), correction published July 16, 1981 (46 FR 36969), and a revision of criterion 9 published July 21, 1983 (48 FR 33376).

Actions Pending Against Licensees

At the current time, there are no escalated enforcement actions pending against any Vermont licensees. There are no outstanding orders, confirmatory action letters, or Title 10 of the *Code of Federal Regulations*, Part 2.206 petitions associated with licenses that will be transferred to the State of Vermont. If any enforcement action arises between now and the effective date of the Agreement, and the action is not resolved by the effective date of the Agreement, the enforcement action would be retained by the NRC, and the staff would coordinate with the State of Vermont regarding the resolution of this action. The staff will work closely with the State of Vermont to ensure the smooth transition of authority over any open actions before the effective date of the Agreement.

Effective Date of the Agreement

The Governor of Vermont requested that the Agreement go into effect by October 1, 2019 (ADAMS Accession No ML19109A085). To accommodate this request, the staff requests that the Commission reach a decision on the staff's recommendations by September 13, 2019, to allow adequate time for preparation of the Agreement for signature, the orderly transfer of files, and the assumption of authority by the State. An effective date of September 30, 2019, will avoid the assessment of fiscal year (FY) 2020 NRC fees for the licenses transferring to the State of Vermont. If the Commission approves, see Enclosure 3 for a schedule of the remaining steps for processing the proposed Agreement to meet the September 30, 2019, effective date.

IMPLEMENTATION:

Following the effective date of the Agreement, the staff will continue to interact with the State of Vermont. This interaction will include the exchange of regulatory information, notices of NRC training courses, and periodic onsite reviews of the State's program for the regulation of agreement materials. The regulatory information exchange includes reports of incidents; significant enforcement actions; and amendments to policies, regulations, or guidance. Communications are generally more frequent with a new Agreement State during the first few years after the Agreement is signed.

The staff plans to hold an orientation meeting with the State of Vermont about 9 months after the effective date of the Agreement to discuss the initial program implementation. The first Integrated Materials Performance Evaluation Program (IMPEP) review of the Vermont Agreement State program will take place about 18 months after the effective date of the Agreement. Subsequent routine IMPEP reviews will occur in accordance with the guidance in Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)".

If approved by the Commission, the State of Vermont will be the 39th Agreement State.

RESOURCES:

In Enclosure 3 to SECY-19-0058, the staff provided resources included in the FY 2019 enacted budget and the FY 2020 Congressional Budget Justification. Those resource estimates have not changed and continue to sufficiently address activities discussed in this SECY paper.

CONCLUSION:

The staff concludes that the State of Vermont 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," (46 FR 7540), and thus that the proposed Agreement meets the requirements of Section 274 of the AEA.

The proposed Vermont program to regulate materials under the Agreement is: 1) compatible with the Commission's program, and 2) adequate to protect the public health and safety with respect to the materials covered by the proposed Agreement.

RECOMMENDATIONS:

That the Commission:

1. Find:

- (a) That the proposed Vermont program to assume regulatory authority for possession and use of: (1) byproduct material as defined in Section 11e.(1), 11e.(3), and 11e.(4) of the Act; (2) source material; and (3) special nuclear material, in quantities not sufficient to form a critical mass, is compatible with the Commission's program for the regulation of like materials; and
- (b) That the proposed Vermont program is adequate to protect the public health and safety within the State with respect to the materials and uses covered by the proposed Agreement.

2. Approve:

- (a) The proposed Agreement between the State of Vermont and the NRC pursuant to Section 274 of the AEA, as set forth in Enclosure 1, by September 13, 2019, to provide adequate time for the signing of the Agreement, the orderly transfer of license files, and the assumption of regulatory authority by the State of Vermont on September 30, 2019.

3. Note:

- (a) The Governor of Vermont requested to not have a formal signing ceremony. Upon approval of the Agreement by the Commission, the staff will prepare the formal documents for signature by the Chairman and Governor.
- (b) Pursuant to the AEA, the Small Business Regulatory Enforcement and Fairness Act of 1996, and Commission guidance, the staff will inform the Speaker of the House of Representatives, the President of the Senate, the Vermont Congressional delegation, and the Director of the Government Accountability Office of the Commission's decision.
- (c) The NRC Office of Public Affairs will issue a press release.
- (d) The agency will publish the text of the Agreement in the *FR*, as required by Section 274e. of the AEA, within 30 days after the Agreement is signed (Enclosure 4).

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. The staff has obtained concurrence from the Office of Management and Budget that this action does not constitute a "major rule" under the Congressional Review Act.

A handwritten signature in black ink, appearing to read "M. Doane for".

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. Proposed Agreement
2. NRC Staff Assessment
3. Current Milestone Schedule
4. Draft *Federal Register* notice

SUBJECT: SECTION 274b. AGREEMENT WITH THE STATE OF VERMONT
 DATED: August 29, 2019

ADAMS Accession No.: ML19192A115 (P)

*via email

SECY-0XX

OFFICE	MSST	MSST	MSST	OGC	RI	NSIR
NAME	DWhite	PMichalak	AKock*	MSegarnick*	DLew*	BHolian*
DATE	7/26/19	7/30/19	7/31/19	NLO 8/8/19	8/3/19	8/6/19
OFFICE	CFO	NMSS/TE	NMSS	EDO		
NAME	MWyle*	CGoode	JLubinski	MDoane (SWest for)		
DATE	8/5/19	8/13/19	8/ 20 /19	8/29 /19		

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