



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

July 11, 2023

Robert E. Akers, Chief  
Counsel to the Committee on Energy  
West Virginia House of Delegates  
1900 Kanawha Blvd., East  
Room E-200B  
Charleston, WV 25305

Dear Robert Akers:

We have reviewed the revisions to the West Virginia Proposed Enabling Legislation, received by our office on April 12, 2023. This legislation was reviewed by comparison to the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-700 Handbook, "Processing an Agreement," the Council of State Governments, Suggested State Legislation, 1983, Volume 42, and policy statement "Criteria for Guidance of States and the NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (Criteria Policy Statement). We discussed our review of the legislation with you on July 6, 2023.

As a result of our review, we have five comments and three editorial comments that have been identified in the enclosure. We recommend that you address these comments and submit your revised enabling legislation for review prior to the submittal of your draft application.

If you have any questions regarding our review or the Suggested State Legislation used in the review, please contact my staff at [AgreementStateRegs.Resource@nrc.gov](mailto:AgreementStateRegs.Resource@nrc.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Adelaide S. Giantelli".

Signed by Giantelli, Adelaide  
on 07/11/23

Adelaide S. Giantelli, Chief  
State Agreement and Liaison Programs Branch  
Division of Materials Safety, Security, State,  
and Tribal Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosure:  
Comment Table

SUBJECT: WEST VIRGINIA PROPOSED ENABLING LEGISLATION DATED July 11, 2023

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**COMMENTS ON WEST VIRGINIA ENABLING LEGISLATION**

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
1	HB2896, Section 22-34-3.(16)	Section 4	<p><b>Definitions: Radioactive material</b></p> <p>West Virginia proposed legislation Section 22-34-3.(16) defines radioactive material as, "It includes accelerator-produced, byproduct, naturally occurring, <b>or</b> source and special nuclear materials," whereas the State Suggested Legislation (SSL) states, "It includes accelerator-produced, byproduct, naturally occurring, source <b>and</b> special nuclear materials."</p> <p>West Virginia needs to revise the definition for radioactive material to match the SSL definition.</p>
2	HB2896, Section 22-34-11.(b)	Section 7	<p><b>Licensing and Registration of Sources of Radiation.</b></p> <p>West Virginia proposed legislation Section 22-34-11.(g) is compatible with Section 7(d) of the SSL. However, Section 22-34-11.(b) also contains similar language to Section 22-34-11.(g). Section 22-34-11.(g) states, "Rules and regulations promulgated under this article may provide for recognition of other state or federal licenses as the Department may deem desirable, subject to such registration requirements as the Department may prescribe." Section 22-34-11.(b) states, "Rules promulgated under this article should provide for recognition of other Agreement State or federal licenses, subject to such requirements as the Department may prescribe."</p> <p>West Virginia needs to delete Section 22-34-11.(b) to prevent duplication with Section 22-34-11.(g).</p>
3	HB2896, Section 22-34-12.(a)	Section 11	<p><b>Surety Requirements</b></p> <p>West Virginia proposed legislation Section 22-34-12.(a) includes source material milling, source material mill tailing, and disposal of low-level radioactive waste as part of describing licensed activities which may require adequate surety.</p> <p>Since West Virginia is not requesting authority for source material milling, source material mill tailing, and disposal of low-level radioactive waste, Section 22-34-12.(a) needs to be updated to say, "[F]or licensed activities the Department may establish by rule or regulation standards and procedures."</p>
4	HB2896, Section 22-34-12.(c)	Section 11	<p><b>Surety Requirements</b></p> <p>West Virginia proposed legislation Section 22-34-12.(c) includes</p>

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			<p>source material milling, source material mill tailing, and disposal of low-level radioactive waste as part of describing licensed activities which may require adequate surety.</p> <p>Since West Virginia is not requesting authority for source material milling, source material mill tailing, and disposal of low-level radioactive waste, Section 22-34-12.(c) needs to be updated to say, “[F]or licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease, the Department may establish by rule or regulation standards and procedures.”</p>
5	HB2896, 22-34-12.(h)	Section 11	<p><b>Surety Requirements</b></p> <p>West Virginia proposed legislation Section 22-34-12.(h) describes the radiation long-term care fund. However, 22-34-13 describes this fund as the, “Radiation Site Closure and Reclamation Fund.”</p> <p>West Virginia needs to replace “radiation long-term care fund” with “Radiation Site Closure and Reclamation Fund”.</p>

#### EDITORIAL COMMENTS ON WEST VIRGINIA ENABLING LEGISLATION

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
1	HB2896, Bill Title	Section 2	<p><b>Declaration of Policy</b></p> <p>Line 41 of the proposed legislation states “fun” instead of “fund.”</p>
2	HB2896, Section 22-34-3.(2)(B)	Section 4	<p><b>Definitions: Byproduct material</b></p> <p>West Virginia proposed legislation Section 22-34-3.(2)(B) states, “The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily of its source material content.” The definition for byproduct material in Section 4 of the Suggested State Legislation does not contain this wording. This definition is found under source material mill tailings.</p> <p>Please consider deleting the source material mill tailings portion of the definition from the definition for byproduct material.</p>
3	HB2896, Section 22-	Section 7	<p><b>Licensing and Registration of Sources of Radiation</b></p>

STATE SECTION		STATE SUGGESTED LEGISLATION SECTION	SUBJECT and COMMENTS
	34-11.(f)		<p>West Virginia proposed legislation Section 22-34-11.(f) states, "...will not constitute a significant risk to the environment or health and safety <b>to</b> the public," whereas the State Suggested Legislation states, "...will not constitute a significant risk to the health and safety <b>of</b> the public."</p> <p>Please consider changing the "to" to "of" to match the SSL definition.</p>