

Exclusive Federal Jurisdiction

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Abstract

Licensed radioactive material is either under the jurisdiction of the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State, depending on the physical location and use of the radioactive material. However the NRC can claim jurisdiction within an Agreement State and exercise legal control of the area without interference from the jurisdiction and administration of state law. Due to the confusing nature of this issue it may be difficult to determine the existing jurisdictional status of particular area or facility. The purpose of this article is to define the term

“Exclusive Federal Jurisdiction” and provide advice to licensees on how to accurately determine jurisdictional status of specific locations on federal-controlled property.

What is Exclusive Federal Jurisdiction?

The NRC defines an area of exclusive federal jurisdiction as an area over which the federal government exercises and maintains legal control without interference from the jurisdiction and administration of state law.^[1] Therefore these areas are under the control of the federal

Table 1: Breakdown of Regulatory Agency based on the Applicant and Proposed Location of Work

WHO REGULATES THE ACTIVITY?	
APPLICANT AND PROPOSED LOCATION OF WORK	RESPONSIBLE REGULATORY AGENCY
Federal agency – regardless of location	NRC
Non-federal entity in a non-Agreement State	NRC
Non-federal entity in Agreement State at non-federally controlled site	Agreement State Radiation Control Program
Non-federal entity in Agreement State at federally-controlled site NOT subject to exclusive federal jurisdiction	Agreement State Radiation Control Program
Non-federal entity in Agreement State at federally-controlled site subject to exclusive federal jurisdiction	NRC

government with regards to civil, regulatory and criminal matters. This sole jurisdictional status includes all issues involving health and environmental protection, such as the regulation of radioactive material use, transportation and storage. Radioactive material licensees operating in areas of federal jurisdiction are also accountable for any improper activities which occurred outside the federal jurisdictional boundary. In these cases, states may pursue civil or criminal actions resulting from the improper activities which occurred in state jurisdiction.

When an area is proclaimed to be under exclusive federal jurisdiction, the federal government exerts its authority over the state at the specific locale. Negotiations with the state may be undertaken to clarify the terms of the authority and boundary of the federal zone. Many areas of exclusive federal jurisdiction were formed by federal agencies several years ago; and new areas are created as the need arises. When the need for exclusive federal jurisdiction at a particular location is no longer needed, the federal government may choose to relinquish control over these areas to the state program.

Areas of exclusive federal jurisdiction must be determined on a case-by-case basis since the status is subject to change. The most common locations for areas of exclusive federal jurisdiction are within military bases and compounds where the federal government believes it needs exclusive control, because of national security reasons for example. However not all federally-controlled areas are under exclusive federal jurisdiction. Certain sections of our nation's military bases, tribal lands, border stations, post offices, etc., potentially may be under exclusive federal jurisdiction depending on the agency's particular constraints.

If there is a question of jurisdictional status in North Dakota for example, the Department of Health's Radiation Control Program recommends that licensees follow the guidance suggested by the NRC. Licensees are instructed to ask the federal agency's local contact (e.g., contract officer, base environmental health officer, district office staff, Judge Advocate General, etc.) to help determine the jurisdictional status of the land or facility. A written statement concerning the

jurisdictional status is not required; however, the NRC and other states highly recommend that the licensee obtain such a statement of jurisdictional status for future reference and inspection purposes.

Jurisdictional Determination for Federal Sites

According to NRC guidance material,^[2] licensees who are uncertain about the jurisdictional status of a proposed worksite on federal property should take the following steps:

- Obtain specific information about the location of the proposed worksite (e.g., street address, range or township, building or hangar number, distance from a specific intersection or other identifying details) and the identity of the federal agency controlling the proposed worksite.
- Consult the federal agency's local contact (contract officer, base environmental health officer, district office staff or regional office staff) and request information about the jurisdictional status of the proposed worksite. It is recommended that licensees request such a statement of jurisdiction in writing. Otherwise, licensees should document for their records the date, name and title of the person at the federal agency who provided the jurisdictional determination.
- If the worksite is identified as falling under exclusive federal jurisdiction and the licensee has only an Agreement State license, the licensee must obtain reciprocity from the NRC to operate in the areas of exclusive federal jurisdiction. If the licensee possesses an NRC license with authorization for temporary job sites, no additional action is required to work in the area of exclusive federal jurisdiction.
- If the worksite is not specifically identified as exclusive federal jurisdiction, responsibility for regulation of radioactive material at that location is maintained by Agreement State's Radiation Control Program. In this instance, licensees must either have reciprocity with the state or have a specific state license to use or store radioactive material at the location.

Table 2: Contact Information for NRC Regional Offices.^[3]

NRC Region	States Covered	Mailing Address	Phone Numbers
Region I	CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT	U.S. NRC Region I 475 Allendale Road King of Prussia, PA 19406-1415	610-337-5000 Toll Free: 1-800-432-1156
Region II	AL, FL, GA, KY, MS, NC, SC, TN, VA, VI, WV, Puerto Rico, Panama Canal	U.S. NRC Region II Sam Nunn Atlanta Federal Ctr 61 Forsyth Street, SW Atlanta, GA 30303-3415	404-562-4400 Toll Free: 1-800-577-8510
Region III	IA, IL, IN MI, MN, MO, OH, WI	U.S. NRC Region III 2443 Warrenville Road, Suite 210 Lisle, Illinois 60532-4352	630-829-9500 Toll Free: 1-800-522-3025
Region IV	AK, AR, AZ, CA, CO, HI, ID, KS, LA, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, WY, Pacific Trust Territories	U.S. NRC Region IV 611 Ryan Plaza Drive, Suite 400 Arlington, TX 76011-8064	817-860-8100 Toll Free: 1-800-952-9677

Agreement State licensees who plan to conduct regulated activities in areas of exclusive federal jurisdiction or operate on Native American land should contact the appropriate NRC Regional office. The NRC regional office liaison will confer with the Agreement State's Radiation Control Program, the Native American representatives and the licensee concerning the jurisdictional question for the particular project. Tribal governments or tribal members seeking their own radioactive material license also should contact the appropriate NRC's Regional office for more information.

References:

1. "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," Form 241, U.S. Nuclear Regulatory Commission, August 2002.
2. "Guidance For Agreement State Licensees About NRC Form 241 Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity) - Final Report," U.S. Nuclear Regulatory Commission, NUREG-1556, Vol. 19, November 2000.
3. "Directory of Personnel Responsible for Radiological Health Programs," Conference of Radiation Control Program Directors, CRCPD Publication 04-1, January 2004.

Acknowledgement

Special thanks to Lloyd Bolling of the U.S. Nuclear Regulatory Commission's Office of State and Tribal Programs for confirming the definition of exclusive federal jurisdiction presented herein.

About the Author

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