



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

(FSME-07-020, February, Program, SA-112, SA-114, SA-115, SA-119, SA-500)

March 9, 2007

ALL AGREEMENT STATES, NEW JERSEY, PENNSYLVANIA, VIRGINIA

**OPPORTUNITY TO COMMENT ON DRAFT REVISION TO FSME PROCEDURES: SA-112 - EMERGENCY SUSPENSION OF A SECTION 274b AGREEMENT, SA-114- SUSPENSION OF A SECTION 274b AGREEMENT, SA-115- TERMINATION OF A SECTION 274b AGREEMENT, SA-119- FOLLOW-UP IMPEP REVIEWS, AND SA-500- JURISDICTION DETERMINATIONS (FSME-07-020)**

**Purpose:** Enclosed for your review and comment is the draft revision to the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedures SA-112, *Emergency Suspension of a Section 274b Agreement*; SA-114, *Suspension of a Section 274b Agreement*; SA-115, *Termination of a Section 274b Agreement*; SA-119, *Follow-up IMPEP Reviews*; and SA-500, *Jurisdiction Determinations*. We would appreciate receiving your **comments\* within 30 days from the date of this letter.**

**Background:** These procedures describe the following processes:

- SA-112: This procedure describes the process used by the Commission to temporarily suspend an Agreement State program when an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.
- SA-114: This procedure describes the process used by the Commission to suspend Agreement State programs.
- SA-115: This procedure describes the process used by the Commission to terminate an Agreement State program.
- SA-119: This procedure describes the process for conducting follow-up reviews of the U.S. Nuclear Regulatory Commission (NRC) Regional and Agreement State materials programs under the Integrated Materials Performance Evaluation Program (IMPEP), including scheduling, assigning personnel for, and reporting the results of the reviews.

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\* This information request has been approved by OMB 3150-0029, expiration 06/30/07; OMB 3150-0200, expiration 06/30/2009. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to [infocollects@nrc.gov](mailto:infocollects@nrc.gov), and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

SA-500: This procedure describes the process for resolving questions of jurisdiction involving the use of byproduct, source and special nuclear material (SNM) within Agreement States; i.e., whether the NRC or an Agreement State is the appropriate licensing agency in certain cases.

**NRC point of contact:** If you have any questions regarding this communication, please contact me at 301-415-3340 or the individual named below.

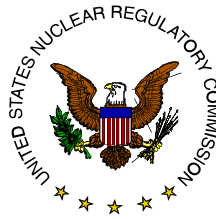
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Enclosures:  
As stated



## **STP Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval**

### ***Emergency Suspension of a Section 274b Agreement***

**SA-112**

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Issue Date: , 2007

Review Date: , 2010

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~~Paul H. Lohaus~~ **Janet R. Schlueter** Original signed by:  
~~Director, STP DMSSA, FSME~~ **Paul H. Lohaus Janet R. Schlueter** Date: / /07

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~~Josephine M. Piccone~~ **Scott W. Moore** Original signed by:  
~~Deputy Director, STP DMSSA, FSME~~ **Josephine M. Piccone Scott W. Moore** Date: / /07


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~~Kathleen N. Schneider~~ **Osiris Siurano** Original signed by:  
~~Procedure Contact, STP FSME~~ **Kathleen N. Schneider** Date: / /07  
**Osiris Siurano**

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#### ***NOTE***

***This procedure was formerly issued by the Office of State and Tribal Programs The (STP) Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of STP this procedures will be distributed for information available through NRC's website.***

	<b>Procedure Title: <i>Emergency Suspension of a Section 274b Agreement</i></b> <b>Procedure Number: SA-112</b>	<b>Page: of 4</b>  <b>Issue Date:</b> / /07
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## I. INTRODUCTION

This procedure describes the process used by the Commission to temporarily suspend an Agreement State program when an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.

## II. OBJECTIVE

To provide the guidelines that will govern the U.S. Nuclear Regulatory Commission's (NRC) decisions to exercise the authority contained in Section 274j(2) of the Atomic Energy Act, as amended (Act).

Note: This procedure does not address the non-emergency situation in which there is no immediate danger to the public health and safety. Guidelines for non-emergency suspension are found in the Office of Federal and State Materials and Tribal Environmental Management Programs (STP FSME) Procedure SA-114, *Suspension of a Section 274b Agreement*.

## III. BACKGROUND

- A. Section 274j(2) of the Act, gives the Commission the authority to temporarily suspend all or part of its Agreement with a State, without a hearing, when an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.
- B. The Commission will exercise this authority only during the period of the emergency. Unless acting pursuant to the Governor's request, the NRC will notify the Governor of the State prior to issuing the temporary suspension (see Appendix A). The authority may be exercised with respect to all or part of the State's Agreement.

## IV. ROLES AND RESPONSIBILITIES

- A. The Executive Director for Operations (EDO) is responsible for informing the Commission when, based on NRC staff recommendations, an immediately effective Emergency Suspension of a Section 274b Agreement Order is issued (see Appendix B) and for submitting a memorandum to the Commission detailing

the nature of the emergency situation and the actions taken to contain or eliminate the danger (see Appendix C).

- B. **STP FSME** is responsible for taking the lead in the preparation and coordination of a Commission memorandum detailing the emergency suspension of the Agreement State Program in question. **STP The Division of Materials Safety and State Agreements (DMSSA), FSME**, also coordinates all follow-up suspension notifications, e.g., to the Governor, and All Agreement and Non-Agreement States.
- C. The Office of Public Affairs (OPA) is responsible for issuing a public announcement (see Appendix D).
- D. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional committees (see Appendix E).
- E. The **appropriate NRC** Region is responsible for coordinating with the State so that all necessary information is gathered and action is taken to notify the affected licensee, or groups of licensees, from the Agreement State radiation control program (see Appendix F).

## **V. GUIDANCE**

- A. Minimum Criteria for Emergency Suspension
  - 1. NRC may suspend an Agreement, pursuant to Section 274j(2), in the case of an emergency involving byproduct, source, or special nuclear material, when the situation presents a danger to the public health and safety and the Agreement State program is not able, or has not taken effective steps, to eliminate the cause of the danger.
  - 2. In evaluating emergency situations, the NRC will consider whether the Agreement State has failed to take, or is prevented from taking, necessary steps to protect the public health and safety. Factors that are appropriate for consideration include:
    - a. The timeliness and adequacy of actions being taken by the State in response to the emergency;
    - b. Whether the State can satisfactorily resolve the emergency situation; and

- c. Whether the State is implementing, or is committed to implement, program improvements to address the cause of the emergency situation.
- 3. The following types of conditions, if not appropriately addressed by the State to prevent the danger, are examples that could result in a consideration of emergency suspension:
  - a. A condition or conditions that caused or could cause an individual or individuals to receive a dose significantly in excess of those basic dose limits set forth in Subpart C of 10 CFR Part 20;
  - b. Conditions that caused or could cause an individual to receive a dose significantly in excess of those basic dose limits set forth in Subpart D of 10 CFR Part 20; or
  - c. Conditions that caused, or could cause, individuals to receive a dose significantly in excess of those dose limits applicable to a certain class of licenses set forth in other parts of 10 CFR that Agreement States must adopt under the Commission Policy Statement for Adequacy and Compatibility, such as Part 35 limits for patient release.

**B. Initiation of Emergency Suspension Action**

- (1) If the Governor of a State requests that the NRC temporarily suspend part of its Agreement, ~~STP~~ **DMSSA** should advise the State to make the request by telephone call to the EDO, in coordination with the Director, ~~STP~~ **FSME**, or in off hours, to the NRC Emergency Operations Center (EOC). Such a request should include the specific nature of the emergency and its possible impacts using the guidance in Section V. A above.
- (2) For events which may warrant consideration of emergency suspension, but for which there is a reasonable basis for presumption that a State will satisfactorily resolve the emergency situation, the Region will inform the State of necessary actions that the State should take and that an emergency suspension under Section 274j(2) will not be issued.

**C. Withdrawal of Emergency Suspension**

1. When the emergency situation is contained or eliminated, the EDO will lift the suspension by notifying the Governor of the State that the emergency suspension is no longer in effect (see Appendix G).
2. The **appropriate NRC** Region will notify the affected licensee or groups of licensees in the State that the emergency suspension is no longer in effect.
3. **STP FSME** will inform the State of continuing actions which the State must carry out in order to prevent another emergency.

**D. Impact of the Emergency Suspension**

1. Depending on State's ability to address condition that precipitated the emergency suspension, the Management Review Board (MRB) will evaluate the Agreement State's continued ability to protect public health and safety. The MRB will consider whether it may be necessary to place the State on heightened oversight (see **STP FSME** Procedure SA-122, *Placing an Agreement State on Heightened Oversight and Monitoring*).

**VI. APPENDICES -~~Draft Samples~~**

- Appendix A - **Sample** Notification to the Governor of [State] of Emergency Suspension
- Appendix B - **Sample** Order Temporarily Suspending Agreement State Program
- Appendix C - **Sample** Memorandum to the Commission
- Appendix D - **Sample** Public Announcement
- Appendix E - **Sample** Congressional Letter
- Appendix F - **Sample** Letter to Affected Agreement State Licensees
- Appendix G - **Sample** Notification of Lifting Suspension

**VII. REFERENCES**

1. ~~STP Procedure SA-112, Emergency Suspension of a Section 274b Agreement~~ supercedes Office of State Programs Internal Procedure D.13
2. **STP FSME** Procedure SA-106, *The Management Review Board*
3. **STP FSME** Procedure SA-114, *Suspension of a Section 274b Agreement*
4. **STP FSME** Procedure SA-115, *Termination of a Section 274b Agreement*
5. **STP FSME** Procedure SA-122, *Placing an Agreement State on Heightened Oversight and Monitoring* (to be developed)

**VIII. ADAMS REFERENCE DOCUMENTS**

The previous revision of SA-112 can be found in the Agencywide Documents Access and Management System as follows:

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS ML#</u>
07/18/2002	STP Procedure SA-112, Emergency Suspension of a Section 274b Agreement	ML023020536



## Appendix A

### ~~Emergency Suspension Procedure~~

#### ~~DRAFT~~ **SAMPLE: Notification to the Governor of [State] of Emergency Suspension**

Dear Governor [Name]:

As you are aware, Section 274j(2) of the Atomic Energy Act gives the Commission the authority to temporarily suspend all or part of its Agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety and the State fails to take steps to contain or eliminate the cause of danger within reasonable time. The Commission is invoking this authority since it has found a situation in your State that presents an [choose the pertinent reason or reasons] immediate, significant, or unacceptable threat to the public health and safety which necessitates immediate suspension of [all or part] of the Agreement.

[This section should provide a brief description of the situation. Provide pertinent information as to how the situation came to the NRC's attention, the State's action in response, etc. Describe briefly the steps taken by the NRC which led it to suspend all or part of the State's Agreement.]

When the emergency situation is contained or eliminated, the Commission will consider whether to lift the suspension. Such a decision will be based on the NRC's determination that the conditions which initiated the emergency suspension no longer exists. The NRC will notify [name the appropriate State office] of continuing actions which the State must implement to prevent another emergency.

The Order will be issued immediately. [Inform the State of the timing for any press releases or correspondence with Congressional Committees, if appropriate.]

Sincerely,

**NRC** Chairman

## Appendix B

### ~~Emergency Suspension Procedure~~

~~DRAFT~~ **SAMPLE: Order Temporarily Suspending Agreement State Program**

#### UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]

[Agreement State Program]

#### ORDER TEMPORARILY SUSPENDING AGREEMENT STATE PROGRAM (EFFECTIVE IMMEDIATELY)

##### I

[Set forth the name of the Agreement State program and background information as to when the program was initiated, what type of agreement materials are covered, and the authority of the Commission and the Governor of the particular State to enter into this type of agreement. In addition, the authority of the Commission to temporarily suspend the Agreement State program, effective immediately, should be stated. The following is provided as a sample discussion for this section].

On [Date], the State of [Name] entered into an agreement (Agreement) with the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Act of 1954, as amended (Act), 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State of [Name] with respect to [byproduct material as defined in Section 11e.(1) of the Act (radioisotopes) and/or byproduct material as defined in Section 11e.(2) of the Act (mill tailings or wastes) and/or source material (uranium and thorium) and/or special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and/or permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings]. The Agreement authorized the State of [Name] to regulate these materials for the protection of public health and safety.

##### II

[This section should provide a description of relevant events, facts, violations, technical or legal reasons that provide the substantive basis for issuing the Order. The following example is provided as a sample text for this section.]

## **Appendix B (continued)**

The Commission has determined that an emergency situation exists in the State of [Name]. [NRC discovered this situation as a result of (phone call, allegation letter, etc.)] or [Provide reasons for NRC's finding.] [Provide any appropriate additional information regarding the emergency situation.]

The Commission has determined that due to [facts requiring implementation of Section 274j(2)], an emergency situation exists which requires immediate action by the Commission to protect the health and safety of [description of the public impacted]. The Commission has also determined that the State of [Name] has failed to take steps necessary to contain or eliminate the cause of danger within a reasonable time. This latter finding is based on [facts pertaining to State's failure to contain or eliminate the cause of the emergency situation]. The Commission has notified the Governor of [State] of its intention to issue this emergency suspension order.

### **III**

[This section should provide the justification for issuing the Order, in light of the facts described in Section II. The following example is provided as a sample text for this section].

Section 274j(2) of the Act authorizes the Commission, upon its own initiative or upon the request of the Governor of any State, to temporarily suspend all or part of its Agreement with the State without notice or hearing if, in the judgment of the Commission, an emergency situation exists with respect to any material covered by such an Agreement creating danger which requires immediate action to protect the health and safety of persons either within or outside of the State, and the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. A temporary suspension of the Agreement under Section 274j(2) of the Act shall remain in effect for such time as the emergency situation exists. During the period of temporary suspension, the Commission is authorized to exercise its authority only to the extent necessary to contain or eliminate the danger.

The NRC must be able to rely on [State's] Agreement State program to adequately protect public health and safety. The facts and the circumstances enumerated in Section II of this Order, in the judgment of the Commission, lead to an emergency situation with respect to materials regulated pursuant to the Act. Immediate action is necessary to protect public health and safety. The State of [State] has failed to take the steps necessary to contain or eliminate the cause of the danger to public health and safety. Therefore, the public health and safety require that the Agreement [or portions identified] [or facility] between the Commission and [State] be temporarily suspended. Furthermore, pursuant to Section 274j(2) of the Act, I find that the public health, safety, and interest requires that this Order be immediately effective.

## Appendix B (continued)

### IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Act, IT IS HEREBY ORDERED THAT THE AGREEMENT [or portion of the Agreement] BETWEEN THE COMMISSION AND [State], DATED [date], IS TEMPORARILY SUSPENDED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

- A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL AFFECTED];
- B. [IDENTIFY WHAT ACTIONS THE STATE MUST DO TO COME INTO COMPLIANCE WITH COMMISSION REQUIREMENTS AND WHEN];
- C. [IDENTIFY WHAT MUST HAPPEN TO REINSTATE THE AGREEMENT].

FOR THE NUCLEAR REGULATORY COMMISSION

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Executive Director for Operations

Dated at Rockville, Maryland this day of , [YEAR]

## Appendix C

### ~~Emergency Suspension Procedure~~

#### ~~DRAFT~~ **SAMPLE: Memorandum to the Commission Regarding the Emergency Suspension of All or Part of an Agreement**

MEMORANDUM TO:       Chairman [Name]  
                                  Commissioner [Name]  
                                  Commissioner [Name]  
                                  Commissioner [Name]  
                                  Commissioner [Name]

FROM:                     Executive Director for Operations

SUBJECT:                 ISSUANCE OF AN ORDER TO TEMPORARILY SUSPEND  
                                  THE [STATE'S NAME] AGREEMENT

The attached Order was issued to [State] on [Date], temporarily suspending [State's Name] **agreement with the US Nuclear Regulatory Commission pursuant to Section 274b of the Atomic Energy Act. The Order is** effective immediately over [identify part of agreement affected and material affected].

The staff has determined that an emergency situation exists in the State of [Name]. [The staff ~~discovered~~ **became aware of** this situation as a result of (phone call, allegation letter, etc.)] or [Provide reasons for the staff's finding] [Provide any appropriate additional information regarding the emergency situation.]

The staff has determined that due to [**provide the** facts requiring implementation of Section 274j(2)], an emergency situation exists which requires immediate action by the Commission to protect the health and safety of [description of the public impacted]. The staff has also determined that [State's Name] has failed to take steps necessary to contain or eliminate the cause of the emergency situation within a reasonable time. This latter finding is based on [facts pertaining to State's failure to contain or eliminate the cause of the emergency situation].

The Governor of [State] has been notified of this action. In addition, the staff's efforts have been coordinated with Governor [Name] and his/her staff. A press release will be issued. Letters to the appropriate Congressional committees will be sent. A letter notifying the affected State licensees will be sent by the Regional Office.

Attachment:  
As stated

## Appendix D

### ~~Emergency Suspension Procedure~~

~~DRAFT~~ **SAMPLE: Public Announcement**

#### NRC ISSUES ORDER TO TEMPORARILY SUSPEND THE [STATE'S NAME] REGULATORY AUTHORITY

The U.S. Nuclear Regulatory Commission (NRC) is temporarily suspending [State's Name] regulatory authority over [identify part of agreement affected and material affected].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. An emergency situation exists in [State's Name] due to [facts requiring implementation of Section 274j(2)].

Under Section 274 of the Atomic Energy Act of 1954, as amended (Act), individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source, and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials.

The Act also authorizes NRC to temporarily suspend all or part of its Agreement with the State without notice or hearing if an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health and safety of persons. In order to take such action, the Commission must also determine that the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. A temporary suspension of the Agreement shall remain in effect for such time as the emergency situation exists. During the period of temporary suspension, the Commission is authorized to exercise its authority only to the extent necessary to contain or eliminate the danger.

Licensees in [State's Name] are being advised of NRC's action in an Order dated [Date]. In the meantime, the affected [State's Name] licenses, as currently issued, will remain in effect under NRC's authority.

## Appendix E

### ~~Emergency Suspension Procedure~~

~~DRAFT~~ **SAMPLE: Congressional Letter**

[Appropriate Congressional Oversight Committees]

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Order, effective immediately, dated [Date], to temporarily suspend [State]'s regulatory authority over [identify part of agreement affected and material affected]. The action is being taken in order to ensure that public health and safety will be protected. The Commission is taking this action pursuant to its authority under Section 274j of the Atomic Energy Act. An emergency situation exists in [State] due to [facts requiring implementation of Section 274j(2)].

Licensees in [State] are being advised of NRC's action in an Order dated [date]. The affected [State] licenses, as currently issued, will remain in effect under NRC's authority. We are also issuing a public announcement.

The temporary suspension of [State's] Agreement will be lifted when [identify what will be necessary to contain or eliminate the danger].

Sincerely,

Director Office of Congressional Affairs

Enclosure:  
As stated

## Appendix F

### ~~Emergency Suspension Procedure~~

~~DRAFT~~ **SAMPLE: Letter to Affected Agreement State Licensees  
Regarding the Emergency Suspension**

TO [STATE] Licensees:

The U.S. Nuclear Regulatory Commission (NRC) has issued an Order, effective immediately, dated [Date], to temporarily suspend [State's] regulatory authority over [identify part of agreement affected and material affected]. The action is being taken in order to ensure that public health and safety will be protected. An emergency situation exists in [State] due to [facts requiring implementation of Section 274j(2)].

Your [affected State] licenses, as currently issued, will remain in effect under NRC's authority [except for modifications necessary to contain or eliminate the danger.] The temporary suspension of [State's] Agreement will be lifted when [identify what will be necessary to contain or eliminate the danger].

Any questions or concerns regarding NRC's emergency suspension should be addressed to [Appropriate Regional Contact].

Sincerely,

Appropriate Regional Administrator



## Appendix G

### ~~Emergency Suspension Procedure~~

#### ~~DRAFT~~ **SAMPLE: Notification of Lifting Suspension**

Dear Governor [Name]:

As you are aware, under Section 274 of the Atomic Energy Act of 1954, as amended, the U.S. Nuclear Regulatory Commission (NRC) is authorized to temporarily suspend all or part of its Agreement with the State without notice or hearing if an emergency situation exists with respect to any material covered by such an Agreement creating danger which requires immediate action to protect the health and safety of persons, and the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. A temporary suspension of the Agreement shall remain in effect for such time as the emergency situation exists. During the period of temporary suspension, the Commission is authorized to exercise its authority only to the extent necessary to contain or eliminate the danger.

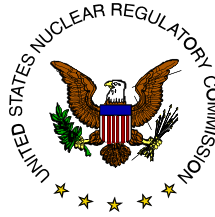
The NRC issued an immediately effective Order dated [Date], to temporarily suspend [State] regulatory authority over [identify part of Agreement affected and material affected]. The action was taken in order to ensure that public health and safety would be protected. An emergency situation existed in [State] due to [facts requiring implementation of Section 274j(2)].

The Commission has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the Commission and [State] has been reinstated. The State must continue to [describe the continuing actions which the State must carry out in order to prevent another emergency].

If you have any questions, please contact me, or your staff may contact [Name], Director, Office of **Federal and State Materials** and ~~Tribal~~ **Environmental Management** Programs, at [telephone number].

Sincerely,

Executive Director for Operations



## **STP Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval**

### ***Suspension of a Section 274b Agreement - SA-114***

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Issue Date: , 2007

Review Date: , 2010

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~~Paul H. Lohaus~~ **Janet R. Schlueter** Original signed by:  
*Director, STP DMSSA, FSME* ~~Paul H. Lohaus~~ **Janet R. Schlueter** Date: / /07

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~~Frederick C. Combs~~ **Scott W. Moore** Original signed by:  
*Deputy Director, STP DMSSA, FSME* ~~Frederick C. Combs~~ **Scott W. Moore** Date: / /07


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~~Kathleen N. Schneider~~ **Osiris Siurano** Original signed by:  
*Procedure Contact, STP FSME* ~~Kathleen N. Schneider~~ **Osiris Siurano** Date: / /07

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 <p><b>Procedure Title:</b>  <i>Suspension of a Section 274b Agreement</i>  <b>Procedure Number: SA-114</b></p>	<p><b>Page: 1 of 8</b>  <b>Issue Date:    /    /07</b></p>
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## I. INTRODUCTION

This procedure describes the process used by the Commission to suspend Agreement State programs.

## II. OBJECTIVE

- A. To provide the guidelines that will be followed by the Nuclear Regulatory Commission (NRC) staff when considering whether to exercise the authority contained in Section 274j(2) of the Atomic Energy Act (Act) to suspend an agreement with a State.
- B. ~~Note:~~ This procedure does not address emergency suspension of an Agreement State program in situations where there is a danger to the public health and safety. Guidelines for emergency suspension are found in the Office of **Federal and State Materials** and **Environmental Management Tribal Programs (STP FSME)** Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*.

## III. BACKGROUND

- A. Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission may suspend all or part of its agreement with the State (see also “Statement of Principles and Policy for the Agreement State Program,” dated September 3, 1997).
- B. The Commission can also suspend an agreement in circumstances where the State radiation control program has not complied with one or more requirements of the Act, i.e., the State program is not compatible with the NRC program and the State has refused or is unable to address those areas previously identified as compatibility concerns and the non-compatibility is disruptive to the national program conducted by NRC and Agreement States for the regulation of the Atomic Energy Act material.

- C. Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension as discussed in Section V.C.1. below. Notice of the suspension will also be published in the *Federal Register*. Suspension, rather than termination, will be the preferred option in those cases where the Commission agrees that the State has provided evidence that the program deficiencies are temporary and that the State is committed to implementing program improvements.

#### **IV. ROLES AND RESPONSIBILITIES**

- A. The Management Review Board (MRB) is responsible for considering the results of the Agreement State review and any other appropriate information in making a recommendation to the Commission to suspend all or part of an Agreement State program.
- B. The Executive Director for Operations (EDO) submits the Commission Paper containing the MRB's recommendation that NRC initiate the proceedings to suspend an agreement.
- C. ~~FSME~~ ~~The Office of State and Tribal Programs (STP)~~ is responsible for taking the lead in the preparation and coordination of a Commission Paper recommending the suspension of the Agreement State program in question. ~~STP~~ ~~FSME~~ also coordinates all follow-up suspension notifications, i.e., to the Governor, the *Federal Register*, the U.S. Department of Labor (DOL), ~~Agreement State licensees~~, and All Agreement and Non-Agreement States.
- D. The Office of the General Counsel (OGC) is responsible for taking the lead for preparing a Commission Paper containing the Commission's decision to suspend an Agreement State program.
- E. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional Committees.
- F. The Office of Public Affairs (OPA) is responsible for making a public announcement if the State does not request a hearing.
- G. The Region is responsible for coordinating with the State so that all necessary action is taken to have license files transferred or made available to the NRC, and coordinates all follow-up suspension notifications to Agreement State licensees.

**V. GUIDANCE****A. MRB**

1. The MRB will meet to discuss the specific program review findings. These meetings are normally open and Agreement States' representatives from the State under review will be invited to attend (see SA-106, *The Management Review Board*).
2. Following the MRB meeting and based upon its determination, the MRB will make a recommendation, to the EDO, and subsequently to the Commission, to suspend all or part of the Agreement State program in question.

**B. ~~STP~~ FSME**

1. If it is the recommendation of the MRB and EDO that NRC initiate the proceedings to suspend an agreement, ~~STP~~ FSME is assigned the lead for preparation of a Commission Paper. The Commission Paper will contain the MRB recommendations and any other information pertinent to the staff's recommendations supporting the suspension of the Agreement State program in question. The Commission Paper will also assess potential resource implications of NRC reasserting authority. (See Appendix A for a sample Commission Paper including a sample *Federal Register* Notice.)
2. If the Commission's decision is to support the MRB's recommendation for suspension, ~~STP~~ FSME will provide the following letters:
  - a. A letter notifying the Governor of the suspension (see Appendix B, ~~Attachment~~ Enclosure 3).
  - b. A letter advising the U. S. ~~Department of Labor (DOL)~~ of the effective date of the suspension of the agreement (see Appendix E).
  - c. ~~A letter notifying each licensee of the suspension (see Appendix F).~~

d. A letter notifying all ~~Agreement and Non-Agreement~~ States of the effective date of the suspension and enclosing a copy of the Order or *Federal Register* Notice (see Appendix G).

3. The Commission Paper will be coordinated with OGC, ~~the Office of Nuclear Material Safety and Safeguards (NMSS)~~ and the affected Region.

C. The Commission

1. Before a decision is made on the MRB's recommendation, the Commission must provide the State with reasonable notice and an opportunity to request a hearing on the issue, as required by Section 274j(1). Section 274j(1) does not require such a hearing if suspension is requested by the Governor.

2. If the State does not request a hearing, the Commission will make a final decision on the issue.

a. OGC is the lead for preparation of a Commission Paper containing the suspension order and the *Federal Register* Notice announcing the Commission's decision (see Appendix B and its Attachments).

b. OPA will provide a public announcement. This information is to be included as ~~background~~ **supplemental information** to the Commission Paper (see Appendix C).

c. ~~STP~~ **FSME** will provide ~~the~~ letters notifying the Governor (~~see Appendix B, Attachment 3~~). ~~FSME will notify the U.S. DOL and Congressional Committees of the suspension (see Appendix E).~~ **This letter is to be included as supplemental information to the Commission Paper.**

~~cd.~~ OCA will notify Congressional Committees. This letter is also to be included as ~~background~~ **supplemental information** to the Commission Paper (see Appendix D).

d. ~~STP will provide letters notifying the Governor, the U.S. DOL and Congressional Committees of the suspension (see Appendix E).~~

e. If the State does request a hearing, the Commission will initiate the hearing process described in Section V.D., Hearing, below.

- f. Whether or not a hearing is requested, if the Commission decision is to not support the recommendation to suspend the State's program, the Governor will be notified of this result. Congressional Committees will be notified and a public announcement will be made by OCA and OPA, respectively.

**D. Hearing**

- 1. The hearing for the suspension of an Agreement State program will be an informal hearing conducted either by the Commission itself, or at the Commission's discretion, by a Special Agreement State Board appointed by the Commission. In cases where the Commission determines that a Special Board will be used, the Board will consist of three members:
  - a. The Chair of the Organization of Agreement States (OAS) (unless the Chair is from the State in question, in which case the Agreement State representative will be the past Chair of the OAS);
  - b. An official from OGC; and
  - c. The Deputy Regional Administrator of an NRC Regional Office (outside of the Region in which the State is located).
- 2. The Commission, or the Special Board, as appropriate, will conduct an informal hearing to address the issues in question.
  - a. At the hearing, the NRC staff, representatives of the affected Agreement State, and interested third parties will have an opportunity to offer their views, answer questions, and submit written materials
  - b. Third parties whose interests may be affected may submit written material and may offer their views for a limited period of time.
  - c. After consideration of the issues, the Commission or the Special Board will issue a decision on suspension. A majority of the Commission or the Special Board will be required to support a decision.

- d. In cases where a Special Board is used, the Commission will have discretion to review the decision of the Special Board, and either uphold or overturn the Board's decision.

E. Additional Coordination During the Suspension

1. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. The lead for the meeting should be the Region in consultation with the OGC, ~~NMSS~~ **FSME**, and the Office of the Chief Financial Officer.
2. After the suspension of the agreement, ~~STP~~ **FSME** will prepare a letter to the U.S. DOL advising the Department of the effective date of the suspension of the agreement (see Appendix E).
3. The **appropriate** Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses affected by the suspension of the State's agreement. Mailing labels should be obtained, if possible, from the State. A letter should be prepared notifying each licensee of the suspension and reassertion by NRC and appropriate information (see Appendix F).
4. ~~STP~~ **FSME** will prepare a letter to ~~All Agreement and Non-Agreement~~ States notifying them of the effective date of the suspension and enclosing a copy of the Order or *Federal Register* Notice (see Appendix G).
5. The **appropriate NRC** Region will coordinate with the State so that all necessary action is taken to have license files transferred or made available to the NRC, **and coordinates all follow-up suspension notifications to Agreement State licensees.**

F. Withdrawal of Suspension/Recommendation for Termination

1. When the situation requiring the suspension has been corrected or eliminated, the MRB will consider all factors and recommend to the Commission whether to lift the suspension.
2. If the situation is not resolved, termination will be considered per ~~STP~~ **FSME** Procedure SA-115, *Termination of a Section 274b Agreement*.

**VI. APPENDICES -~~Draft Samples~~**



Appendix A - Commission Paper for Suspension of All or Part of an Agreement and Request for Hearings

- ~~Attachment~~ **Enclosure** 1 - Management Review Board Recommendations  
~~Attachment~~ **Enclosure** 2 - Proposed *Federal Register* Notice Regarding Opportunity for Hearing on Suspension

Appendix B - Commission Paper for Suspension of All or Part of an Agreement

- ~~Attachment~~ **Enclosure** 1 - Order Suspending Agreement State Program  
~~Attachment~~ **Enclosure** 2 - *Federal Register* Notice Regarding the Suspension and Reassertion of NRC Authority  
~~Attachment~~ **Enclosure** 3 - Letter to Governor Regarding the Commission Decision on Suspension

Appendix C - Public Announcement to be Issued by the Office of Public Affairs (OPA)

Appendix D - Letters to Congressional Committees

Appendix E - Suspension Procedure, Letter to U.S. Department of Labor (DOL) on Suspension

Appendix F - Suspension Procedure, Letter to Licensees Regarding Suspension and Reassertion

Appendix G - Suspension Procedure, Letter to All States Regarding Suspension and Reassertion

## **VII. REFERENCES**

1. ~~STP Procedure SA-114, *Suspension of Section 274b Agreement*, supercedes *Office of State Programs Internal Procedure D.22*.~~
2. ~~STP~~ **FSME** Procedure SA-106, *The Management Review Board*.
32. ~~STP~~ **FSME** Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*.
43. ~~STP~~ **FSME** Procedure SA-115, *Termination of a Section 274b Agreement*.
54. "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997.

## **VII. ADAMS REFERENCE DOCUMENTS**

The previous revision of SA-114 can be found in the Agencywide Documents Access and Management System as follows:

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS ML#</u>
02/08/2001	STP Procedure SA-114, Suspension of a Section 274b Agreement	ML010820146

## Appendix A

~~DRAFT~~ SAMPLE: Commission Paper for Suspension  
of All or Part of an Agreement and Request for Hearings

FOR: The Commissioners

FROM: Executive Director for Operations

SUBJECT: STAFF'S RECOMMENDATIONS REGARDING SUSPENSION OF [STATE'S]  
AGREEMENT WITH THE COMMISSION

PURPOSE:

To present the results of the staff review of the [State] program, the Management Review Board's (MRB) recommendation for suspension of [all or part] of the [State] agreement and request that a special Agreement State Board be convened to provide [State] with an opportunity for a hearing, if requested.

SUMMARY:

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and results of the MRB, the staff finds that [State's] regulatory program [is inadequate to protect public health and safety and/or has not complied with one or more requirements of the Atomic Energy Act (the Act)]. Accordingly, the staff is recommending that the Commission initiate hearing procedures for the suspension of [State's] program.

DISCUSSION:

Section 274j(1) of the Act authorizes the Commission to suspend the agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission suspension is required to adequately protect public health and safety or because the State has not complied with one or more requirements of the Act. Commission suspension of a State's Agreement is a temporary measure. If the deficiencies in a State's program are remedied, the Commission may lift the suspension by informing the Governor of the State and affected licensees.

[This section should contain facts concerning the State's program, why suspension is desirable versus termination. Reviews, MRB Meetings, and discussions and correspondence with the State addressing the deficiencies should be documented.]

[The staff should document any information on whether the State will be requesting a hearing regarding the suspension. If a hearing is likely, staff should discuss the options of the informal hearing conducted by the Commission or by the Special Agreement State Board.]

## Appendix A (Continued)

### RESOURCES:

[To be developed in coordination with the Office of the Chief Financial Officer (CFO)].

~~COORDINATION:~~ This paper has been coordinated with the Office of the General Counsel (OGC), which has no legal objection.

### RECOMMENDATION:

That the Commission:

1. Notify ~~the~~ [State] of an opportunity for a hearing on the proposed suspension through [Special Agreement State Board or Commission itself]. If requested, approve such a request.

### COORDINATION:

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

[NAME]

Executive Director for Operations

### ~~Attachments~~ Enclosures:

1. MRB Recommendations
2. Proposed *Federal Register* Notice Regarding Opportunity for Hearing or Suspension

## Appendix A - Attachment Enclosure 1

~~DRAFT~~ SAMPLE: Management Review Board Recommendations

MEMORANDUM TO: Executive Director for Operations

FROM: Deputy Executive Director for  
Materials, Waste, Research, and State, Tribal and Compliance  
Programs  
Chairman, Management Review Board

SUBJECT: MANAGEMENT REVIEW BOARD RECOMMENDATIONS  
FOR THE SUSPENSION OF THE [STATE] AGREEMENT  
PROGRAM

On [date], the Management Review Board (MRB) met to consider the review of the [State] Agreement State program [attached are meeting minutes]. [Give details on the program deficiencies and the State's plans to correct the problems.]

Given the desire of [State] to continue with their agreement, but in light of the need to protect public health and safety, the MRB recommends that you direct the staff to prepare a Commission Paper to initiate suspension of the agreement program in accordance with procedures.

Attachment:  
As stated

## Appendix A - Attachment **Enclosure 2**

### ~~DRAFT SAMPLE:~~ Proposed *Federal Register* Notice Regarding Opportunity for Hearing on Suspension

Opportunity for Hearing on Suspension of [State] Regulatory Authority and the Reassertion of NRC Authority

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Opportunity for Hearing on Suspension of the [State] Regulatory Authority and the Reassertion of NRC Authority

SUMMARY: The NRC staff has proposed that the Commission suspend [State's] regulatory authority over [identify part of agreement affected and material affected] and reassert NRC's authority in [State]. The staff believes that such action is necessary in order to ensure that public health and safety will be protected. Accordingly, the Commission is providing the State with this notice of opportunity for a hearing on the proposed suspension of the [State's] regulatory authority.

#### FOR FURTHER INFORMATION CONTACT:

[~~STP~~ **FSME** CONTACT], Office of **Federal and State Materials** and **Environmental Management** Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number], e-mail: **XXX@NRC.GOV**.

#### SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act of 1954, as amended, (the Act) individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source, and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials.

Staff review and recommendations regarding the adequacy and compatibility of Agreement State Programs are made through the Management Review Board (MRB) which consists of senior NRC managers and an Agreement State representative. The MRB makes its decisions regarding the adequacy of each Agreement State's program based on the staff's reviews of the program. In reviewing [State's] program, the MRB has recommended that the Commission suspend the State's agreement with NRC until improvements to assure adequate protection of public health and safety are incorporated into [State's] regulatory program. [Narrative of MRB findings.]

## Appendix A - Attachment **Enclosure 2** (Continued)

Pursuant to the provisions of Section 274j of the Act, the staff has proposed that the Commission suspend the [State] agreement over [identify part of agreement affected and material affected] and reassert NRC's authority in [State] in order to protect the public health and safety. This action ensures that there will be adequate licensing and inspection of the Atomic Energy Act activities.

Section 274j(1) of the Act requires that before termination or suspension of all or part of an agreement, reasonable notice and opportunity for hearing must be provided to the State. If the State does not request a hearing within 30 days, the Commission will make a final decision on the staff's recommendation to suspend the State's Agreement.

If a hearing is requested by the State, [provide details regarding conduct of hearing depending on whether the hearing will be conducted by the Special Agreement State Board or the Commission itself.]

Existing licensees in [State] will be advised of this potential change in regulatory authority if the Commission decides to initiate suspension proceedings.

For information regarding this reassertion action contact [Director], Office of **Federal and State Materials** and **Environmental Management** Tribal Programs (STP **FSME**).

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## **Appendix B**

### **~~Suspension Procedure~~**

~~DRAFT SAMPLE:~~ Commission Paper for Suspension of All or Part of an Agreement

FOR:           The Commissioners

FROM:       General Counsel

SUBJECT:   REQUEST FOR SUSPENSION OF [ALL OR PART OF] THE [STATE]  
AGREEMENT

PURPOSE:

To inform the Commission that [State] was offered an opportunity for a hearing and not having requested one to recommend suspension of [all or part] of the [State] agreement.

SUMMARY:

As stated in SECY [Identification Number] a review of [State's] Agreement State program was conducted on [Date]. As a result of this review and results of the Management Review Board (MRB), the staff finds that [State's] regulatory program [is inadequate to protect public health and safety and/or has not complied with one or more requirements of Section 274 of the Atomic Energy (the Act)]. On [date], NRC published a notice of opportunity for a hearing on the proposed suspension in the *Federal Register*. The State has not requested a hearing on the matter. Accordingly, the staff recommends that the Commission suspend [name of State's] Agreement.

DISCUSSION:

Section 274j(1) of the Act authorizes the Commission to suspend the agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission finds that such suspension is required to protect public health and safety or the State has not complied with one or more requirements of Section 274 of the Act.

[Cite this section from previous SECY. This section should contain facts concerning the State's program, why suspension is desirable versus termination. Reviews, MRB Meetings, and discussions and correspondence with the State addressing the deficiencies should be documented.]



## Appendix B (Continued)

[The staff should document that the State was offered an opportunity for a hearing but did not request one.]

### RESOURCES:

[To be developed in coordination with the Office of the Chief Financial Officer (CFO)].

COORDINATION: ~~This paper has been coordinated with the Office of State and Tribal Programs (STP).~~

RECOMMENDATION: That the Commission:

1. Approve the Order provided in ~~Attachment~~ Enclosure 1 and direct the Secretary to issue such Order.
2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (~~Attachment~~ Enclosure 2). The Commission Order will be published in the *Federal Register* along with the notice of reassertion of authority.
3. Approve the letter notifying the Governor of [State] of the suspension (~~Attachment~~ Enclosure 3).

### COORDINATION:

This paper has been coordinated with the Office of Federal and State Materials and Environmental Management Programs (FSME). The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

General Counsel

### ~~Attachments~~ Enclosures:

1. Proposed Commission Order
2. Proposed *Federal Register* Notice
3. Draft Letter to the Governor

## **Appendix B - Attachment Enclosure 1**

DRAFT

Order Suspending Agreement State Program

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]

[Agreement State Program]

### **ORDER SUSPENDING AGREEMENT STATE PROGRAM**

#### **I**

[Set forth the name of the Agreement State program and background information as to when the program was initiated, what type of agreement materials are covered, and the authority of the Commission and the Governor of the particular State to enter into this type of agreement. In addition, the authority of the Commission to suspend the Agreement State program should be stated. The following is provided as a sample discussion for this section].

On [Date], the State of [Name] entered into an agreement (Agreement) with the Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Atomic Energy Act (Act) of 1954, as amended, 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State with respect to [byproduct material as defined in Section 11e(1) of the Act (radioisotopes) and/or byproduct material as defined in Section 11e(2) of the Act (mill tailings or wastes) and/or source material (uranium and thorium) and/or special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and/or permanent disposal of low-level waste containing one or more of the materials stated above, but not including mill tailings and/or 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]. The Agreement authorized the State of [Name] to regulate these materials for the protection of public health and safety.

[This section should provide a description of relevant events, facts, deficiencies, technical or legal reasons that provide the substantive basis for issuing the Order. The following example is provided as a sample discussion for this section].

## **Appendix B - Attachment Enclosure 1 (Continued)**

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and the Management Review Board (MRB) recommendations, the Commission has determined that [State's] regulatory program [fails to adequately protect public health and safety and/or is incompatible with the Commission's regulatory program]. The review and MRB recommendations ascertained that [State's] Agreement State program failed to adequately protect public health and safety by [facts directly bearing on failure of the program to adequately maintain public health and safety].

[and/or the following:]

In addition, the review and independent evaluation ascertained that [State's] Agreement State program is incompatible with the Commission's regulatory program in that [State's] regulatory program [facts directly bearing on incompatibility between the two programs].

### **III**

[This section should provide the justification for issuing the Order, in light of the facts described in Section II. The following example is provided as a sample discussion for this section].

Section 274d of the Act provides, in part, that the Commission shall enter into an Agreement with a State to discontinue the Commission's regulatory authority if the Commission finds that the State's regulatory program is adequate to protect the public health and safety with respect to materials covered by the proposed agreement and the State's regulatory program complies with Section 274o of the Act and in all other respects is compatible with the Commission's program for the regulation of such materials.

Section 274j(1) of the Act authorizes the Commission to suspend the agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission finds that such suspension is required to protect public health and safety or the State has not complied with one or more requirements of Section 274 of the Act.

The NRC must be able to rely on [State's] Agreement State program to [adequately protect public health and safety] [and/or] [to be compatible with the Commission's requirements and standards applicable to the agreement material]. The facts and circumstances enumerated in Section II of this Order raise serious doubts as to whether [State] can be relied upon to comply with Section 274 of the Act.

Consequently, **I we** have determined that the suspension is required [to protect the public health and safety] OR [because the State has not complied with one or more of the requirements of Section 274 of the Act].

## **Appendix B - Attachment Enclosure 1 (Continued)**

### **IV**

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Atomic Energy Act, as amended, IT IS HEREBY ORDERED THAT THE AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED [date], IS SUSPENDED AS FOLLOWS:

- A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL AFFECTED];
- B. [IDENTIFY WHAT ACTIONS THE STATE MUST DO TO COME INTO COMPLIANCE WITH COMMISSION REQUIREMENTS AND WHEN];
- C. [IDENTIFY WHAT MUST HAPPEN TO REINSTATE THE AGREEMENT];

FOR THE NUCLEAR REGULATORY COMMISSION

Secretariat

Dated at Rockville, Maryland this       day of    , [Year]

## Appendix B - Attachment Enclosure 2

### DRAFT SAMPLE: Federal Register Notice Regarding the Suspension and Reassertion of NRC Authority

Suspension of [State] Regulatory Authority and the Reassertion of NRC Authority in [State]

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Suspension of the [State] Regulatory Authority and the Reassertion of the NRC Authority in [State].

SUMMARY: The NRC has suspended the [State's] regulatory authority over [identify part of agreement affected and material affected] and is reasserting NRC's authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.

#### FOR FURTHER INFORMATION CONTACT:

[STP FSME CONTACT], Office of Federal and State Materials and Environmental Management Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number], e-mail XXX@NRC.GOV.

#### SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act (the Act), as amended, individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source, and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials.

Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission may suspend all or part of its agreement with the State.

Staff review and recommendations regarding the adequacy and compatibility of Agreement State Programs are made through the Management Review Board (MRB), which consists of senior NRC managers and an Agreement State representative. The MRB makes its decisions regarding the adequacy of each

## Appendix B - ~~Attachment~~ Enclosure 2 (Continued)

Agreement State's program based on the staff's reviews of the program. In reviewing [State's] program, the MRB recommended that the Commission suspend the State's agreement with NRC until improvements to assure adequate protection of public health and safety are incorporated into [State's] regulatory program. [Narrative of MRB findings.]

The Commission has considered the State of [Name] radiation control program and has agreed with the findings of the MRB, as well as with its recommendation to suspend the program.

[Narrative of MRB findings and any hearings held.]

[State] has indicated its desire to continue its radiation control program under the agreement. The [State] radiation control program has provided NRC staff with a "~~Corrective Action Management~~ Program Improvement Plan" describing actions to be taken to address the identified deficiencies, including specific goals and timetables. Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lifting the suspension of [State]. Notification of such cessation will be made to the State's Governor, the State's Congressional delegation, and all other Agreement and Non-Agreement States. There also will be a *Federal Register* Notice and a press release.

Existing licensees in [State] are being advised of this change in regulatory authority. Pursuant to a Commission Order published with this notice, existing [State] licenses affected by this change will become effective NRC licenses under conditions set forth in the Order.

For information regarding this reassertion action, contact [~~Director Regional Administrator~~], Office of Nuclear Material Safety and Safeguards (NMSS) **NRC Region X**.

Inquires regarding the status of licenses or applications should be directed to [Regional Office contact].

## Appendix B - Attachment Enclosure 3

~~DRAFT~~ SAMPLE: Letter to Governor Regarding the Commission's Decision on Suspension

Dear Governor (Name):

As you are aware, Section 274j of the Atomic Energy Act (the Act) gives the Commission authority to suspend all, or part, of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission may suspend all or part of its agreement with the State.

The last review of the [State] radiation control program found significant program deficiencies and the program was found to be [inadequate to protect the public health and safety and/or incompatible with the NRC's program.] [Describe hearing proceedings if held.] The Commission is suspending [State's Name] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in [State's Name] due to [facts requiring implementation of Section 274j(1)]. A copy of the Order is enclosed.

I understand that the State wishes to continue its radiation control program under the agreement. The [State] radiation control program has provided NRC staff with a "~~Corrective Action Management~~ Program Improvement Plan" describing actions to be taken to address the identified deficiencies, including specific goals and timetables. Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lift the suspension of the [State] agreement.

Your staff may contact [Name], Director, Office of Federal and State Materials and Environmental Management Tribal Programs (STP FSME), at [telephone number] to discuss issues associated with this suspension.

Sincerely,

NRC Chairman

Enclosure:  
As stated

## Appendix C

~~DRAFT SAMPLE:~~ Public Announcement to be Issued by the Office of Public Affairs

### NRC ISSUES ORDER TO SUSPEND THE [STATE'S NAME] REGULATORY AUTHORITY

The Nuclear Regulatory Commission (NRC) is suspending the [State's Name] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in the [State's Name] radiation control program due to [actions requiring implementation of Section 274j(1)].

Under Section 274 of the Atomic Energy Act (the Act), as amended, individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source, and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials. The State of [Name] assumed regulatory jurisdiction when an agreement with the NRC was signed in [Year].

Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take decision, the Commission will suspend all or part of its agreement with the State.

Licensees in [State] are being advised of the NRC's action in the Order [Date]. In the meantime, the affected [State] licenses, as currently issued, will remain in effect under NRC's authority.



## Appendix D

### ~~DRAFT SAMPLE:~~ Letters to Congressional Committees

[Appropriate Congressional  
Oversight Committees]

Dear Mr. Chairman:

At the request of the Governor of [State], the Nuclear Regulatory Commission (NRC), on [Date], agreed to suspend [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement], and to reassert NRC regulatory authority over these materials, in order to protect the public health and safety.

[or if appropriate]

[Describe circumstance by which NRC is suspending the agreement and details of a hearing, if held.]

Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lift the suspension of the agreement with the [State].

The effective date of the suspension is [Date]. Enclosed is a copy of the *Federal Register* Notice which announces the suspension. We also expect to issue a press release in conjunction with the issuance of the *Federal Register* Notice.

Sincerely,

[NAME]

Director

Office of Congressional Affairs

Enclosure:

As stated

## **Appendix E**

### **Suspension Procedure**

~~DRAFT SAMPLE:~~ Letter to U.S. Department of Labor on Suspension

Occupational Safety and Health Administration  
Department of Labor

Dear Administrator:

This is to advise the Department of Labor (DOL) that under Section 274 of the Atomic Energy Act, the Nuclear Regulatory Commission (NRC) has suspended [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement].

The Order, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in [State's Name] due to [facts requiring implementation of Section 274j(1)]. [State] desires to maintain and not terminate the agreement. When the deficiencies in the program have been addressed and the program is found to be adequate to protect public health and safety and compatible with the NRC program, NRC will consider lifting the suspension.

Enclosed is a copy of the Order for your information. We will notify you of the future changes in the status of the program.

Sincerely,

[NAME], Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Tribal Programs

Enclosure:

As stated

## **Appendix F**

### **Suspension Procedure**

~~DRAFT SAMPLE~~: Letter to Licensees Regarding Suspension and Reassertion

Attention: [State] Licensees

The Nuclear Regulatory Commission (NRC) has suspended [State's] regulatory authority over [identify part of agreement affected and material affected] and is reasserting NRC's authority in [State] by an Order issued [Date].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in [State] due to [facts requiring implementation of Section 274j(1)].

Section 274j of the Atomic Energy Act (the Act) gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission may suspend all or part of its agreement with the State.

This letter is to advise you that activities being conducted under your [State's] license will be subject to regulatory control by the NRC. In the meantime, your [State] licenses, as currently issued, will remain in effect under NRC's authority [unless specific issues are addressed]. All communications concerning your use of [appropriate materials] should be addressed to:

Regional Office  
Address  
Phone number

A copy of the Order is available from the Regional Office. When [State] has addressed the deficiencies identified and the suspension is no longer required to protect the public health and safety, the [State's] regulatory authority will be returned. You will be notified of any changes in the regulatory authority.

Sincerely,

[NAME]  
**Regional Administrator**  
~~Director~~  
~~Office of State and Tribal Programs~~

cc: [State]

## Appendix G

### Suspension Procedure

DRAFT SAMPLE: Letter to All States Regarding Suspension and Reassertion

(FSME-[Year]-[Letter #], Month, Subject)

Date

ALL AGREEMENT AND NON-AGREEMENT STATES, NEW JERSEY, PENNSYLVANIA, VIRGINIA

**PROGRAM MANAGEMENT INFORMATION: NUCLEAR REGULATORY COMMISSION (NRC) ORDER TO SUSPEND THE [STATE'S NAME] REGULATORY AUTHORITY (SP-XX-XXX FSME-[YEAR]-[LETTER #])**

Enclosed, for your information, is the Order issued by the NRC suspending [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in [State] due to [facts requiring implementation of Section 274j(1)].

Licensees in [State] are being advised of the NRC's action. In the meantime, the affected [State] licenses, as currently issued, will remain in effect under NRC's authority.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: [Staff Contact]  
TELEPHONE:

INTERNET: XXX@NRC.GOV  
FAX:

[NAME], Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Tribal Programs

Enclosure:  
As stated



## **STP Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval**

### ***Termination of a Section 274b Agreement SA-115***

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Issue Date: , 2007

Review Date: , 2010

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~~Paul H. Lohaus~~ **Janet R. Schlueter** Original signed by:  
*Director, STP DMSSA, FSME* ~~Paul H. Lohaus~~ **Janet R. Schlueter** Date: / /07

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~~Kathleen N. Schneider~~ **Scott W. Moore** Original signed by:  
*Acting Deputy Director, STP DMSSA, FSME* ~~Kathleen N. Schneider~~ Date: / /07  
**Scott W. Moore**


---

~~Kathleen N. Schneider~~ **Osiris Siurano** Original signed by:  
*Procedure Contact, STP* ~~Kathleen N. Schneider~~ Date: / /07  
**Osiris Siurano**

---

#### ***NOTE***

***This procedure was formerly issued by the Office of State and Tribal Programs. The (STP) Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of STP this procedures will be distributed for information available through NRC's website.***

 <p><b>Procedure Title:</b>  <i>Termination of a Section 274b Agreement</i>  <b>Procedure Number: SA-115</b></p>	<p><b>Page:</b>    of</p> <p><b>Issue Date:</b>    /    /07</p>
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## I. INTRODUCTION

This procedure describes the process used by the Commission to terminate an Agreement State program.

## II. OBJECTIVE

- A. To provide the guidelines to be followed by the Nuclear Regulatory Commission (NRC) when considering whether or not to terminate an agreement pursuant to the authority contained in Section 274j(1) of the Atomic Energy Act (Act), as amended.
- B. To describe the method for processing the termination, whether initiated at the request of the State or at the initiative of the NRC.

## III. BACKGROUND

- A. Section 274j of the Act, as amended, gives the Commission authority to terminate its agreement with a State if such termination is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act (e.g., is found to be not compatible with the Commission's program). In cases where the Commission finds that program deficiencies are such that the State can no longer protect the public health and safety or continuing incompatibility results in significant national disruption, the Commission will institute proceedings to terminate the agreement with the State. The Commission can institute procedures to terminate an agreement even though the State has not been on probation. Procedures to address Agreement State probation can be found in the Office of **Federal and State Materials** and **Tribal Environmental Management** Programs (**STP FSME**) Procedure SA-113, "*Placing an Agreement State on Probation.*" Procedures to address emergency situations to temporarily suspend all or part of an agreement with a State can be found in **STP FSME** Procedure SA-112 "*Emergency Suspension of a Section 274b Agreement.*"
- B. The Commission's "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997, established the option of terminating an Agreement State program. Section 274j(i1) of the Act, as amended calls on the Commission to suspend or terminate an Agreement State program if "the State has not complied with one or more of the requirements" of Section 274.

- C. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination as discussed in Section V.D.1. Notice of the proposed termination will also be published in the *Federal Register*.

#### **IV. ROLES AND RESPONSIBILITIES**

- A. The Management Review Board (MRB) is responsible for considering the results of the Agreement State review and any other appropriate information in making a recommendation to the Commission to terminate an Agreement State program.
- B. The Executive Director for Operations (EDO) signs the Commission Paper containing the MRB's recommendation that NRC initiate the proceedings to terminate an agreement.
- C. ~~STP~~ **FSME** is responsible for taking the lead in the preparation and coordination of the first Commission Paper recommending the termination of the Agreement State program in question. ~~STP~~ **FSME** also coordinates all follow-up termination notifications, i.e., to the Governor, the *Federal Register*, the U.S. Department of Labor, Agreement State licensees, and ~~All Agreement and Non-Agreement~~ States.
- D. The Office of the General Counsel (OGC) is the lead for the preparation of the Commission Paper containing the termination order and the *Federal Register* Notice announcing the Commission decision.
- E. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional Committees of the Agreement State program termination.
- F. The Office of Public Affairs (OPA) is responsible for releasing a public announcement of the Commission's decision to terminate the agreement.
- G. The **appropriate** NRC Region is responsible for taking the lead in conducting a meeting with the licensees in the State to explain the reassertion of NRC authority and present fee structure. This is to be done in consultation with the ~~Office of Nuclear Material Safety and Safeguards (NMSS)~~, OGC and the Office of the Chief Financial Officer (OCFO).
- H. The Commission or a Commission-appointed Special Agreement State Board is responsible for conducting an informal termination hearing, if so requested by the Agreement State.

**V.      GUIDANCE****A.      Minimum Criteria for Termination**

1.      At the request of the Governor, NRC may terminate all or part of its Agreement with a State and reassert its authority. The letter should be addressed to the Chairman, NRC, from the Governor.
2.      The Commission will institute formal procedures to terminate an agreement under the following circumstances:
  - a.      The State radiation control program is found to be inadequate to protect public health and safety, and no compensating program has been implemented;
  - b.      The State has been on probation for a period of time during which it failed to respond to NRC concerns regarding the State's ability to carry out a program to protect public health and safety; or
  - c.      The State radiation control program is not compatible with the NRC program and the State has refused, or is unable, to address those areas previously identified as compatibility concerns and the non-compatibility is significantly disruptive to the national program among NRC and Agreement States for the regulation of Atomic Energy Act material.
3.      The following are examples of situations where NRC would consider initiating formal procedures to terminate an agreement. This list is not inclusive and other situations may require consideration by the Commission at the recommendation of the MRB and the EDO.
  - a.      Significant loss of staff, which includes number of staff or those with critical skills, coupled with a State's inability to hire appropriate replacements in a timely manner to meet the needs of the program.
  - b.      Continual problems which manifest in the State's inability to perform adequate inspections, respond to incidents, events or allegations, or issue appropriate licenses.
  - c.      State's inability to adopt compatible program elements over a significant period of time.
  - d.      Continued probationary or suspension status for a State program.



**B. MRB**

1. The MRB will meet to discuss the specific program review findings. These meetings are normally open to the public and Agreement States' representatives will be invited to attend (SA-106, *The Management Review Board*). MRB's internal deliberation regarding the termination of an Agreement State program may be closed, given the predecisional nature of those discussions.
2. Following the MRB meeting and based upon its determination, the MRB will make a recommendation to the EDO, and subsequently to the Commission, to terminate the Agreement State program in question.

**C. ~~STP~~ FSME**

1. If it is the recommendation of the MRB and EDO that NRC initiate the proceedings to terminate an agreement, ~~STP~~ FSME is assigned the lead for preparation of a Commission Paper. The Commission Paper will contain the MRB recommendations and any other information pertinent to the staff's recommendations supporting the termination of the Agreement State program in question. The paper will also assess potential resource implications of NRC reasserting authority. (See Appendix A for sample Commission Paper, including a sample *Federal Register* Notice.)
2. The initial Commission paper will be coordinated with OGC, ~~NMSS~~, ~~OCFO~~ and the appropriate Region.

**D. The Commission**

1. Before a decision is made on the MRB's recommendation, the Commission must provide the State with reasonable notice and an opportunity to request a hearing on the issue, as required by Section 274j(1), as amended. Section 274j(1) does not require such a hearing if termination is requested by the Governor.
2. If the State does not request a hearing, the Commission will proceed to make a final decision on the issue.
  - a. OGC is the lead for preparation of a Commission Paper containing the termination order, the *Federal Register* Notice announcing the Commission decision, and letter notifying the Governor of the termination (see Appendix B).

- b. ~~STP~~ **FSME** will provide as ~~background~~ **supplemental information** to the second Commission Paper:
  - i. Public Announcement (see Appendix ~~EB~~, **Enclosure 4**);
  - ii. Letters to Congressional Committees (see Appendix ~~DB~~, **Enclosure 5**);
  - iii. Letter to U.S. Department of Labor (**DOL**), U.S. Department of Energy (**DOE**), Council on Environmental Quality (**CEQ**), U.S. Food and Drug Administration (**FDA**), U.S. Environmental Protection Agency (**EPA**), and Department of Homeland Security (**DHS**) (see Appendix **EC**).
- 3. If the State does request a hearing, the Commission will initiate the hearing process described in Section E. ~~Hearing~~, below.
- 4. Whether or not a hearing is requested, if the Commission decides not to support the recommendation to terminate the State's program, the Governor will be notified of this result.

**E. Hearing**

- 1. The hearing for the termination (including the termination of a program that had been previously suspended) of an Agreement State program will be an informal hearing conducted either by the Commission itself, or at the Commission's discretion, by a Special Agreement State Board appointed by the Commission. In cases where the Commission determines that a Special Board will be used, the Board will consist of three members:
  - a. The Chair of the Organization of Agreement States (OAS) (unless the Chair is from the State in question, in which case the Agreement State representative will be the past Chair of the OAS);
  - b. An official from OGC; and
  - c. The Deputy Regional Administrator of a NRC Regional Office (outside of the Region in which the State is located).
- 2. The Commission, or the Special Board, as appropriate, will conduct an informal hearing to address the issues in question.

- a. At the hearing, the NRC staff, representatives of the Agreement State, and interested third parties will have an opportunity to offer their views, answer questions, and submit written materials.
- b. Third parties whose interests may be affected may submit written material and may offer their views for a limited period of time.
- c. After consideration of the issues, the Commission or the Special Board will issue a decision on termination. A majority of the Commission or the Special Board will be required to support a decision.
- d. In cases where a Special Board is used, the Commission will have discretion to review the decision of the Special Board, and either uphold or overturn the Board's decision.

**F. Agreement State and NRC Activities During Termination Proceedings**

During the period of time NRC is pursuing termination of an agreement with a State, State and NRC activities should be coordinated so that there is continued protection of the public health and safety. ~~STP~~ **FSME** will coordinate with the State; **and** Region, ~~and NMSS~~ as to the necessary technical assistance to continue the protection of public health and safety.

**G. Additional Coordination After Terminations**

1. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. Lead for the meeting should be the Region in consultation with ~~NMSS~~ **FSME**, OGC and OCFO.
2. After the termination of the agreement, ~~the STP~~ **FSME** will issue the letter to the U.S. Department of Labor advising the Department of the effective date of the termination of the agreement (see Appendix E).
3. The Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses under the State's agreement. Mailing labels should be obtained, if possible, from the State. A letter should be prepared notifying each licensee of the termination, reassertion ~~by~~ **of NRC's authority**, and appropriate information (see Appendix F).

4. ~~STP~~ **FSME** will prepare a letter to All Agreement and Non-Agreement States notifying them of the effective date of the termination and, if appropriate, enclosing a copy of the Order or *Federal Register* Notice (see Appendix G).
5. The **appropriate NRC** Region will coordinate with the State so that all necessary action is taken to have the files for the licenses transferred to the NRC.

H. Renewed Interest in 274b

A State that has had an agreement terminated by the NRC may, at a later date, express interest in obtaining a new agreement. The State should be treated as other Non-Agreement States interested in agreements, and ~~STP~~ **FSME** Procedure SA-700, *Processing a New Agreement*, should be followed for these negotiations.

## VI. APPENDICES

- Appendix A - **Sample** Commission Paper for Reassertion of NRC Authority in an Agreement State and Request for Hearings  
~~Attachment~~ **Enclosure** 1 - Management Review Board Recommendations  
~~Attachment~~ **Enclosure** 2 - Proposed *Federal Register* Notice Regarding Opportunity for Hearing on Reassertion
- Appendix B - ~~Termination Procedure~~, **Sample** Commission Paper for Reassertion of NRC Authority in an Agreement State  
~~Attachment~~ **Enclosure** 1 - Order Terminating Agreement State Program  
~~Attachment~~ **Enclosure** 2 - *Federal Register* Notice Regarding Reassertion  
~~Attachment~~ **Enclosure** 3 - Letter to Governor Regarding the Commission Decision on Termination
- Appendix C - ~~Termination Procedure~~, **Sample** Public Announcement to be Issued by the Office of Public Affairs
- Appendix D - ~~Termination Procedure~~, **Sample** Letters to Congressional Committees
- Appendix E - ~~Termination Procedure~~, **Sample** Letter to U.S. Department of Labor on Termination
- Appendix F - ~~Termination Procedure~~, **Sample** Letter to Licensees Regarding Termination and Reassertion
- Appendix G - ~~Termination Procedure~~, **Sample** Letter to All States Regarding Termination and Reassertion

## VII. REFERENCES

1. ~~STP~~ **FSME** Procedure SA-106, *The Management Review Board*

2.    ~~STP~~ **FSME** Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*
3.    ~~STP~~ **FSME** Procedure SA-113, *Placing an Agreement State on Probation*
4.    ~~STP~~ **FSME** Procedure SA-114, *Suspension of a Section 274b Agreement*
5.    ~~STP Procedure SA-115, *Termination of a Section 274b Agreement*, supercedes Office of State Programs Internal Procedure D.21~~
6.    ~~STP~~ **FSME** Procedure SA-700, *Processing a New Agreement*
- 7-6.    “Statement of Principles and Policy for the Agreement State Program,” dated September 3, 1997

## **VII.    ADAMS REFERENCE DOCUMENTS**

The previous revision of SA-115 can be found in the Agencywide Documents Access and Management System as follows:

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS ML#</u>
05/15/2001	STP Procedure SA-115, Termination of a Section 274b Agreement	ML011370786

# Appendix A

## ~~Termination Procedure~~

~~DRAFT SAMPLE:~~ Commission Paper for Reassertion of NRC Authority in an Agreement State and Request for Hearings

FOR: The Commissioners

FROM: Executive Director for Operations

SUBJECT: STAFF'S RECOMMENDATIONS REGARDING TERMINATION OF  
[STATE'S] AGREEMENT WITH THE COMMISSION AND OPPORTUNITY  
FOR HEARING

### PURPOSE:

To present the results of the staff review of the [State] program, the Management Review Board's (MRB) recommendation for termination of [all or part] of the [State] agreement and request that a special Agreement State Board be convened to provide [State] with an opportunity for a hearing if requested.

### SUMMARY:

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and results of the MRB, the staff finds that [State's] regulatory program [is inadequate to protect public health and safety and/or has not complied with one or more requirements of Section 274 of the Atomic Energy Act (Act)]. Accordingly, the staff is recommending that the Commission initiate hearing procedures for the suspension of [State's] program.

### DISCUSSION:

Section 274j of the Act authorizes the Commission to terminate the agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission termination is required to adequately protect public health and safety or because the State has not complied with one or more requirements of the Act.

[This section should contain facts concerning the State's program, why termination is appropriate versus suspension. Reviews, MRB meetings, and discussions and correspondence with the State addressing the deficiencies should be documented.]

## Appendix A (Continued)

[The staff should document any information on whether the State will be requesting a hearing regarding the termination. If a hearing request is likely, staff should discuss the options of the informal hearing conducted by the Commission or by the Special Agreement State Board.]

RESOURCES: [TO BE DEVELOPED IN COORDINATION WITH THE OFFICE OF THE CHIEF FINANCIAL OFFICER]

### COORDINATION:

~~This paper has been coordinated with the Office of the General Counsel, which has no legal objection.~~

### RECOMMENDATION:

That the Commission:

1. Notify [State] of an opportunity for a hearing on the proposed termination through [Special Agreement State Board or Commission itself]. If requested, approve such a request.

### 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 paper for resource implications and has no objections.

Executive Director  
for Operations

### ~~Attachments~~ Enclosures:

1. MRB Recommendations or Letter from Governor Requesting Termination
2. Proposed *Federal Register* Notice Notifying [State] of an Opportunity for a Hearing

## ~~Attachment~~Enclosure 1

DRAFT SAMPLE: Management Review Board Recommendations

MEMORANDUM TO: Executive Director for Operations

FROM: Deputy Executive Director for Materials, Research  
and State Programs  
Chairman, Management Review Board

SUBJECT: MANAGEMENT REVIEW BOARD RECOMMENDATIONS  
FOR THE TERMINATION OF THE [STATE] AGREEMENT  
PROGRAM

On [date], the Management Review Board (MRB) met to consider the review of the [State] Agreement State program. Enclosed, are ~~{attached are~~ meeting minutes].

[Give details on the program deficiencies, the MRB adequacy and compatibility findings, and the State's response to the findings.]

Given the responsibility of the NRC to protect the public health and safety, the MRB recommends that you direct the staff to prepare a Commission paper to initiate termination of the agreement between [State] and NRC, dated (Date).

Attachment:  
As stated



## **Attachment**Enclosure 2

~~DRAFT SAMPLE:~~—~~Proposed~~ *Federal Register* Notice Regarding Opportunity  
for Hearing on Reassertion of NRC's authority

Opportunity for Hearing on Termination of [State's] Regulatory Authority and the Reassertion of  
NRC Authority

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Opportunity for Hearing on Termination of the [State] Regulatory  
Authority and the Reassertion of the NRC Authority

SUMMARY: The NRC staff has proposed that the Commission terminate [State's] regulatory  
authority over [identify part of agreement affected and material affected] and  
reassert NRC's authority in [State]. The staff believes that such action is  
necessary in order to ensure that public health and safety will be protected.  
Accordingly, the Commission is providing the State with this notice of  
opportunity for a hearing on the proposed termination of the [State's] regulatory  
authority.

FOR FURTHER INFORMATION CONTACT:

[STP FSME CONTACT], Office of Federal and State Materials and Tribal  
Environmental Management Programs, U.S. Nuclear Regulatory Commission,  
Washington, DC 20555, telephone [telephone number], email XXX@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act (Act), as amended in 1959,  
individual States can assume part of the NRC's regulatory authority over the  
possession and use of byproduct, source, and special nuclear materials. In order  
to effect and maintain such a transfer of authority, the State must demonstrate that  
its program is adequate to protect the public health and safety and is also  
compatible with the Commission's program for regulating those materials.

[Narrative on whether the State has requested termination].

Staff review and recommendations regarding the adequacy and compatibility of  
Agreement State Programs are made through the Management Review Board  
(MRB) which consists of senior NRC managers and an Agreement State  
representative. The MRB makes its decisions regarding the adequacy of each  
Agreement State's program based on the staff's reviews of the program. In  
reviewing [State's] program, the MRB has recommended that the Commission  
terminate the State's agreement with NRC [Narrative of MRB findings and any  
hearings.]

## **~~Attachment~~Enclosure 2 (Continued)**

Pursuant to the provisions of Section 274j of the Act of 1954, as amended, the staff has proposed that the Commission terminate the [State] agreement over [identify part of agreement affected and material affected] and reassert NRC's authority in [State] in order to protect the public health and safety.

Section 274j(1) of the Act requires that before termination or suspension of all or part of an agreement, reasonable notice and opportunity for hearing must be provided to the State. If the State does not request a hearing within 30 days, the Commission will make a final decision on the staff's recommendation to terminate the State's Agreement. If a hearing is requested by the State, [provide details regarding the conduct of hearing including the question as to whether the hearing will be conducted by the Special Agreement State Board or the Commission itself.] After consideration of information obtained from the hearing, the Commission will make a final determination on termination of the agreement with the State of [State's Name].

Existing licensees in [State] will be advised of this potential change in regulatory authority if the Commission decides to initiate termination proceedings.

For information regarding this reassertion action contact [Director], **FSME**.

# Appendix B

## Termination Procedure

~~DRAFT SAMPLE:~~ Commission Paper for Reassertion of NRC  
Authority in an Agreement State

FOR: The Commissioners

FROM: General Counsel

SUBJECT: REASSERTION OF NRC REGULATORY AUTHORITY OVER  
[ALL OR PART OF] THE [STATE] AGREEMENT

### PURPOSE:

To inform the Commission that [State] was offered an opportunity for a hearing and not having requested one, to recommend termination of [all or part] of the [State] agreement.

### SUMMARY:

As stated in SECY [Identification Number], a review of [State's] Agreement State program was conducted on [Date]. As a result of this review and results of the Management Review Board (MRB), the staff finds that [State's] regulatory program [is inadequate to protect public health and safety and/or has not complied with one or more requirements of the Act]. On [Date], NRC published a notice of opportunity for a hearing on the proposed suspension in the *Federal Register*. The State has not requested a hearing on the matter. Accordingly, the staff recommends that the Commission suspend [State's] Agreement.

### DISCUSSION:

Section 274j of the Act authorizes the Commission to terminate the agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission finds that such termination is required to adequately protect public health and safety, or because the State has not complied with one or more requirements of the Act.

[Cite this section from previous SECY. This section should contain facts concerning the State's program, why termination is appropriate versus suspension. Reviews, MRB meetings, and discussions and correspondence with the State addressing the deficiencies should be documented.]

[The staff should document that the State was offered an opportunity for a hearing, but did not request one.]

### COORDINATION:

~~This paper has been coordinated with the Office of State and Tribal Programs.~~

## Appendix B (Continued)

RESOURCES: [TO BE DEVELOPED IN COORDINATION WITH THE OFFICE OF THE CHIEF FINANCIAL OFFICER]

COMMITMENT:

1. A public announcement will be issued by the Office of Public Affairs (Attachment 4).
2. The appropriate Congressional Committees will be informed of the Commission's decision by the Office of Congressional Affairs (Attachment 5).

RECOMMENDATION:

That the Commission:

1. Approve the Order provided in Attachment 1 and direct the Secretary to issue such Order.
2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (Attachment 2). The Commission Order will be published in the *Federal Register* along with the notice of reassertion of authority.
3. Approve the letter notifying the Governor of [State] of the termination (Attachment 3).
4. ~~Note a public announcement will be issued by the Office of Public Affairs (Attachment 4).~~
5. ~~Note that the appropriate Congressional Committees will be informed of the Commission's decision by the Office of Congressional Affairs (Attachment 5).~~

COORDINATION:

This paper has been coordinated with the Office of Federal and State Materials and Environmental Management Programs. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

General Counsel

~~Attachment~~Enclosures:

1. Proposed Commission Order
2. Proposed *Federal Register* Notice
3. Draft Letter to the Governor
4. Public Announcement to be Issued by the Office of Public Affairs
5. Letters to Congressional Committees

# **AttachmentEnclosure 1**

Draft

Order Terminating Agreement State Program

## UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]

[Agreement State Program]

### ORDER TERMINATING AGREEMENT STATE PROGRAM

#### I

[Set forth the name of the Agreement State program and background information as to when the program was initiated, what type of agreement materials are covered, and the authority of the Commission and the Governor of the particular State to enter into this type of agreement. In addition, the authority of the Commission to terminate the Agreement State program should be stated. The following is provided as a sample discussion for this section.]

On [Date], the State of [Name] entered into an agreement (Agreement) with the Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State with respect to [byproduct material as defined in Section 11e(1) of the (radioisotopes) and/or byproduct material as defined in Section 11e(2) of (mill tailings or wastes) and/or source material (uranium and thorium) and/or special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and/or permanent disposal of low-level waste containing one or more of the materials stated above, but not including mill tailings]. The Agreement authorized the State of [Name] to regulate these materials for the protection of public health and safety.

#### II

[This section should provide a description of relevant events, facts, deficiencies, technical or legal reasons that provide the substantive basis for issuing the Order. The following example is provided as a sample discussion for this section.]

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and Management Review Board (MRB) recommendations, the Commission has

**AttachmentEnclosure 1 (Continued)**

determined that [State's] regulatory program is inadequate to protect public health and safety. The review ascertained that [State's] Agreement State program failed to adequately protect public health and safety by [facts directly bearing on failure of the program to adequately maintain public health and safety].

[and/or the following:]

In addition, the review and MRB evaluation ascertained that [State's] Agreement State program has not complied with one or more requirements of the Act, i.e., it is incompatible. [Describe facts directly bearing on incompatibility between the two programs.]

### III

[This section should provide the justification for issuing the Order, in light of the facts described in Section II. The following example is provided as a sample discussion for this section.]

Section 274d of the Act provides, in part, that the Commission shall enter into an Agreement with a State to discontinue the Commission's regulatory authority if the Commission finds that the State's regulatory program is adequate to protect the public health and safety with respect to materials covered by the proposed agreement and the State's regulatory program complies with Section 274o of the Act and in all other respects is compatible with the Commission's program for the regulation of such materials.

Section 274j(1) of the Act authorizes the Commission to terminate its agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission finds that such suspension is required to protect public health and safety or the State has not complied with one or more requirements of Section 274 of the Act.

The NRC must be able to rely on [State's] Agreement State program to [adequately protect public health and safety] [and/or] [to be compatible with the Commission's requirements and standards applicable to the agreement material]. The facts and circumstances enumerated in Section II of this Order raise serious doubts as to whether [State] can be relied upon under the Act. [Explain why facts are severe enough to warrant termination as opposed to suspension.]

Consequently, ~~I~~ **we** have determined that the termination is required [to protect the public health and safety] OR [because the State has not complied with one or more of the requirements of Section 274 of the Act of 1954, as amended].

**AttachmentEnclosure 1 (Continued)**

IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Act of 1954, as amended, IT IS HEREBY ORDERED THAT THE AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED \_\_\_\_\_, TERMINATE AS FOLLOWS:

A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL AFFECTED];

FOR THE NUCLEAR REGULATORY COMMISSION

Secretariat

Dated at Rockville, Maryland  
this day of, [~~XXXX~~] [DATE]

## **AttachmentEnclosure 2**

~~DRAFT~~ SAMPLE: *Federal Register* Notice Regarding Reassertion

Termination of [State] Regulatory Authority and the Reassertion of NRC Authority in [State]

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Termination of the [State] Regulatory Authority and the Reassertion of the NRC Authority in [State].

SUMMARY: The NRC has terminated [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected [or because of compatibility concerns].

FOR FURTHER INFORMATION CONTACT:

[STP FSME CONTACT], Office of **Federal and State Materials** and **Tribal Environmental Management** Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number], **email XXX@NRC.GOV**.

SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act, as amended in 1959 (Act), individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials.

[Narrative on whether the State has requested termination].

Staff review and recommendations regarding the adequacy and compatibility of Agreement State Programs are made through the Management Review Board (MRB) which consists of senior NRC managers and an Agreement State representative. The MRB makes its decisions regarding the adequacy of each Agreement State's program based on the staff's reviews of the program. In reviewing [State's] program, the MRB recommended that the Commission terminate the State's agreement with NRC. The Commission has considered the State of [Name] radiation control program and has agreed with the findings of the MRB, as well as with its recommendation to terminate the program.

**AttachmentEnclosure 2 (Continued)**



[Narrative of MRB findings and any hearings.]

Pursuant to the provisions of Section 274j of the Act of 1954, as amended, the Commission found that it is necessary to terminate the [State] agreement over [identify part of agreement affected and material affected] and reassert NRC's authority in [State] in order to protect the public health and safety. This finding ensures that there will be adequate licensing inspection of Act activities. This reassertion of authority will become effective on [date].

Persons seeking licenses for activities within [State] involving [materials affected] should file such applications with [Regional Office information].

Existing licensees in [State] are being advised of this change in regulatory authority. Pursuant to a Commission Order published with this notice, existing [State] licenses affected by this change will become effective NRC licenses under conditions set forth in the Order.

For information regarding this reassertion action, contact [Director], ~~Office of Nuclear Material Safety and Safeguards~~ **FSME**.

Inquiries regarding the status of licenses or applications should be directed to [Regional Office contact].

## ~~Attachment~~Enclosure 3

~~DRAFT SAMPLE:~~ Letter to Governor Regarding the Commission Decision on Termination

Dear Governor [Name]:

[As a result of your letter of [Date], the Commission, on [Date], agreed to terminate [State's] [Identify part of agreement affected and material affected] and reasserting the Nuclear Regulatory Commission's (NRC's) authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.

[or]

[As a result of a finding of inadequacy and/or incompatibility of the State's radiation control program, the Commission, on [Date], terminated [State's] agreement discontinuing the NRC authority over [Identify part of agreement affected and material affected] and reasserting NRC's authority in [State]. [Describe hearings, if held.] The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.]

Enclosed is a copy of the *Federal Register* Notice which announces NRC reassertion. We will also issue a public announcement and inform the appropriate Congressional Oversight Committees in conjunction with the issuance of the *Federal Register* Notice.

[Radiation Control Program Director], [State], was informed of the decision on [date]. I understand [Name of Director] is making arrangements for transfer of the appropriate files and material to the NRC.

We appreciate the State's cooperation in this matter. [Name], Director, ~~Office of State and Tribal Programs~~ FSME, at [telephone number] can answer any questions that your staff may have.

Sincerely,

Chairman

Enclosure:  
As stated

## ~~Appendix C~~ **Enclosure 4**

### ~~Termination Procedure~~

~~DRAFT~~ SAMPLE: Public Announcement to be Issued by the Office of Public Affairs

#### NRC TO REASSERT REGULATORY AUTHORITY IN [STATE]

The Nuclear Regulatory Commission [NRC] is reasserting its regulatory authority over the possession and use of byproduct, source, and special nuclear materials in [State].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. [Facts requiring termination should be given, including information on a hearing, if held.]

Under Section 274 of the Atomic Energy Act, as amended in 1959, individual States can assume part of the NRC's regulatory authority over the possession and use of byproduct, source, and special nuclear materials. In order to effect and maintain such a transfer of authority, the State must demonstrate that its program is adequate to protect the public health and safety and is also compatible with the Commission's program for regulating those materials. The State of [State Name] signed an agreement with the NRC in [Year] that authorized the State to regulate these radioactive materials.

Section 274j of the Atomic Energy Act gives the Commission authority to terminate all or part of its agreement with a State if the termination is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission will terminate all or part of its agreement with the State.

Licensees in [State] are being advised of the NRC's action in Order [Date], and the NRC staff has identified files which are to be transferred from [State] authorities. In the meantime, the affected [State's Name] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements.

## ~~Appendix D~~ **Enclosure 5**

### ~~Termination Procedure~~

~~DRAFT SAMPLE:~~ Letters to Congressional Committees

[Appropriate Congressional  
Oversight Committees]

Dear Mr. Chairman:

At the request of the Governor of [State], the Nuclear Regulatory Commission [NRC], on [Date], agreed to terminate [State's] agreement relinquishing the Nuclear Regulatory Commission (NRC) regulatory authority over [identify categories of material under the agreement], and to reassert NRC licensing and regulatory authority over these materials, in order to protect the public health and safety.

[or if appropriate]

[Describe circumstance by which NRC is terminating the agreement and details of a hearing if held.]

The effective date of the termination is [Date]. Enclosed is a copy of the *Federal Register* Notice announcing NRC reassertion of regulatory authority. A Press Release will be released in conjunction with the issuance of the *Federal Register* Notice.

Sincerely,

Director  
Office of Congressional Affairs

Enclosure:  
As stated

## Appendix EC

### Termination Procedure

~~DRAFT SAMPLE:~~ Letter to U.S. Department of Labor on Termination

Mr. \_\_\_\_\_, Assistant Secretary  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Avenue  
Washington, D.C. 20210

Dear ~~Administrator~~ Mr. \_\_\_\_\_:

This is to advise the ~~Department of Labor~~ [AGENCY] that under Section 274 of the Atomic Energy Act, the Nuclear Regulatory Commission [NRC] terminated [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement]. ~~[State's]~~

The effective date of the termination is [Date]. Enclosed is a copy of the Order for your information.

Sincerely,

Director  
Office of Federal and State Materials and Tribal  
Environmental Management Programs

Enclosure:  
As stated

Identical letters to:

Mr. \_\_\_\_\_, Assistant Secretary  
Congressional, Public and Intergovernmental Affairs  
U.S. Department of Energy  
N3641 1000 Independence Ave. SW  
Washington, D.C. 20585-0001

Mr. \_\_\_\_\_, Chairman  
Council on Environmental Quality  
722 Jackson Place NW  
Washington, D.C. 20503-0002

Appendix EC (Continued)

Dr. \_\_\_\_\_, Director  
Center for Devices & Radiological Health  
Food and Drug Administration  
9200 Corporate Boulevard  
Rockville, MD 20850-3229

Ms. \_\_\_\_\_, Assistant Administrator for Air and Radiation  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, D.C. 20460

Ms. \_\_\_\_\_, Director  
Office of Legislative and Intergovernmental Affairs  
Department of Homeland Security  
1800 F St. NW  
Governmental Services Administration Bldg.  
Washington DC 20555

## **Appendix FD**

### ~~Termination Procedure~~

~~DRAFT SAMPLE~~: Letter to Licensees Regarding Termination and Reassertion

Attention: [State] Licensees

The Nuclear Regulatory Commission [NRC] has terminated [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State] by an Order issued [Date].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.

This letter is to advise licensees that activities being conducted under your [State's] license will be subject to regulatory control by NRC. In the meantime, your [State] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements. All communications concerning your use of [appropriate materials] should be addressed to:

Regional Office  
Address  
Phone number

A copy of the Order is enclosed.

**Regional Administrator**  
~~Director~~  
~~Office of Nuclear Material~~  
~~Safety and Safeguards~~

Enclosure:  
As stated

# Appendix ~~G~~E

## ~~Termination Procedure~~

~~DRAFT SAMPLE:~~ Letter to All States Regarding Termination and Reassertion

(FSME-[YEAR]-[LETTER NUMBER], [MONTH], [CATEGORY],[SUBJECT])

[DATE]

ALL AGREEMENT AND NON-AGREEMENT STATES-~~NEW JERSEY, PENNSYLVANIA,~~  
~~VIRGINIA~~

**PROGRAM MANAGEMENT INFORMATION: NRC ORDER TO TERMINATE  
[STATE'S NAME] REGULATORY AUTHORITY AND REASSERT NRC  
REGULATORY AUTHORITY (STP-XX-XXX)**

Enclosed, for your information, is the Order issued by the Nuclear Regulatory Commission [NRC] terminating [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State].

The action, which was effective on [Date], is being taken to ensure that public health and safety will be protected.

Licensees in [State] are being advised of NRC's action. In the meantime, the affected [State's Name] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT:      Staff Contact  
TELEPHONE:

INTERNET: ~~XXX@NRC.GOV~~  
FAX:

Director  
Division of Material Safety and State Agreements  
Office of ~~Federal and~~ State ~~Materials~~ and ~~Tribal~~  
Environmental Management Programs

Enclosure:  
As stated





## **STP Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval**

### ***Follow-up IMPEP Reviews***

**SA-119**

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Issue Date: , 2007

Review Date: , 2010

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~~Paul H. Lohaus~~ **Janet R. Schlueter** Original signed by:  
*Director, STP DMSSA, FSME* ~~Paul H. Lohaus~~ **Janet R. Schlueter** Date: / /07

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~~Frederick C. Combs~~ **Scott W. Moore** Original signed by:  
*Deputy Director, STP DMSSA, FSME* ~~Frederick C. Combs~~ **Scott W. Moore** Date: / /07

---

~~Kathleen N. Schneider~~ **Osiris Siurano** Original signed by  
*Procedure Contact, STP FSME* ~~Lance J. Rakovan~~ **Acting for** Date: / /07  
**Osiris Siurano**

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#### ***NOTE***

***This procedure was formerly issued by the Office of State and Tribal Programs. The (STP) Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of STP this procedures will be distributed for information available through NRC's website.***

 <p><b>Procedure Title:</b>  <b><i>Follow-up IMPEP Reviews</i></b>  <b>Procedure Number: SA-119</b></p>	<p><b>Page: 1 of 12</b></p> <p><b>Issue Date:    /    /07</b></p>
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## I. INTRODUCTION

- A. This document describes the procedures for conducting follow-up reviews of the U.S. Nuclear Regulatory Commission (NRC) Regional and Agreement State materials programs under the Integrated Materials Performance Evaluation Program (IMPEP), including scheduling, assigning personnel for, and reporting the results of the reviews.
- B. Depending on the findings of an IMPEP review, the Management Review Board (MRB) may direct that a follow-up IMPEP review take place. The scope of the follow-up review will be dependant on the areas of the program identified as in need of improvement.

## II. OBJECTIVES

To provide the guidelines that will be followed by IMPEP teams when preparing, conducting, and reporting results of follow-up IMPEP reviews of NRC Regional and Agreement State materials programs.

## III. BACKGROUND

As of October 1, 2006, NRC reorganized its nuclear materials and Agreement State programs into two new program offices. The newly created Office of Federal and State Materials and Environmental Management Programs (FSME) is comprised of the former Office of State and Tribal Programs and two technical divisions from the Office of Nuclear Material Safety and Safeguards. NRC Regional and Agreement State materials programs are reviewed at least every four years under IMPEP. The MRB may direct that a follow-up review be conducted prior to the standard four-year interval. A follow-up review will normally occur **during or** after a period of heightened oversight and will be conducted to evaluate the program's response to previous IMPEP recommendations and to evaluate the status of any indicator found satisfactory with recommendations for improvement or unsatisfactory during the last IMPEP review. The follow-up review can also be used to evaluate all of the common and applicable non-common performance indicators as in a full IMPEP review, or focus on one or more specific indicators. A follow-up review can be used to track the progress of a program, and thus help determine the timing of the next IMPEP review, whether previous indicator findings should be changed or whether additional oversight may be needed. During each follow-up review, the team is also responsible for completing all elements of a periodic meeting as described in ~~Office of State and Tribal Programs (STP)~~ **FSME** Procedure SA-116.

#### IV. ROLES AND RESPONSIBILITIES

~~STP FSME~~ is the lead office responsible for coordination of Agreement State ~~and NRC Regional~~ follow-up IMPEP reviews. ~~The Office of Nuclear Materials Safety and Safeguards (NMSS) is the lead office responsible for coordination of NRC Regional follow-up IMPEP reviews.~~ Additional information on roles and responsibilities can be found in ~~STP FSME~~ Procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*.

A. MRB:

1. Provides direction, usually through a prior IMPEP review findings, or review of the results of a periodic meeting, on the need for a follow-up review.
2. For follow-up reviews ~~where an MRB meeting is held to review follow-up IMPEP review findings,~~ the roles and responsibilities of the MRB and the guidelines to be followed by the MRB are the same as those detailed in ~~STP FSME~~ Procedure SA-106, *The Management Review Board*.
3. ~~For follow-up reviews where an MRB meeting is not held, MRB members are responsible for reviewing and concurring on the final follow-up IMPEP report usually within two weeks. The Deputy Executive Director for Materials, Research, and State Programs will sign out the final follow-up IMPEP report.~~

B. Director, ~~STP FSME~~:

1. ~~Attends Agreement State follow-up IMPEP review exit meetings or designates the Deputy Director, STP to attend.~~ *Designates the appropriate division director(s) to attend follow-up IMPEP review exit meetings;*
2. ~~Acts as an MRB member per STP Procedure and concurs on final follow-up IMPEP reports.~~ *Acts as, or designates an FSME representative as, an MRB member per FSME Procedure SA-106 and concurs on final follow-up IMPEP reports.*

C. ~~Deputy Director, STP~~ *Division of Material Safety and State Agreements (DMSSA)*:

1. Attends Agreement State **and Regional** IMPEP review exit meetings as designated by the Director, STP.
2. ~~If an MRB meeting is held, s~~Signs out Agreement State follow-up review proposed final reports to the MRB per STP Procedure SA-106. **Can designate the Deputy Division Director, DMSSA to attend IMPEP review exit meetings.**
3. ~~If an MRB meeting is not held, concurs on issuance of the Agreement State final follow-up review report to the MRB per STP Procedure SA-106.~~

D. IMPEP Project Manager, STP **DMSSA**:

1. Reviews and provides feedback on all ~~Agreement State~~ follow-up IMPEP reports to both the IMPEP team leader and STP **FSME** management.
2. Coordinates MRB meetings per STP **FSME** Procedure SA-106, as necessary.
3. **Signs Agreement State follow-up review proposed final reports to the MRB.**

E. ~~Director, NMSS:~~

- ~~1. Designates the appropriate NMSS division director(s) to attend NRC Regional follow-up IMPEP review exit meetings;~~
- ~~2. Acts as an MRB member per STP Procedure SA-106 and concurs on final follow-up IMPEP reports.~~

~~F. Director, Division of Industrial and Medical Nuclear Safety (IMNS);~~

- ~~1. Attends NRC Regional IMPEP review exit meetings, as designated;~~
- ~~2. If an MRB meeting is held, s~~Signs out the NRC Regional follow-up review proposed final reports to the MRB per STP Procedure SA-106.
- ~~3. If an MRB meeting is not held, concurs on issuing NRC Regional final follow-up review report to the MRB per STP Procedure SA-106.~~

~~G.~~ NMSS IMPEP Contact:

- ~~1.~~ Coordinates Regional MRB meetings per STP Procedure SA-106.

~~H.~~ IMPEP Team Leader:

1. Coordinates and conducts assigned follow-up IMPEP reviews;
2. Completes the IMPEP report in accordance with Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, STP FSME Procedure SA-106, and this procedure;
3. Designates an IMPEP team member to act as principal reviewer for each applicable performance indicator;
4. Signs out draft follow-up IMPEP reports to the Agreement States or Region;
5. Presents review findings at an MRB meetings if a MRB meeting is conducted.
6. ~~Prepares the final follow-up review report for transmittal to the MRB per STP Procedure SA-106, if an MRB meeting is not convened.~~

I. Regional State Agreements Officer (RSAO):

1. Participates in all IMPEP follow-up reviews for Agreement States in their assigned Region when such a review is directed by the MRB;
2. Completes the review of their assigned indicator(s) in accordance with the applicable STP FSME procedures and writes their assigned section(s) of the follow-up IMPEP report;
3. Ensures the periodic meeting portion of the follow-up IMPEP review is completed and prepares the meeting summary, as necessary;
4. Presents review findings at an MRB meeting, if a MRB meeting is convened.

J. IMPEP Team Member:

1. Completes the review of their assigned indicator(s) in accordance with the applicable ~~STP~~ **FSME** procedures and writes their assigned section(s) of the follow-up IMPEP report.
2. Presents review findings at ~~the~~ MRB meetings, ~~if a MRB meeting is convened.~~

V. GUIDANCE

A. Scope of Follow-up IMPEP Reviews:

1. The follow-up review will include a complete review of one or more of the common and/or non-common performance indicators since the previous IMPEP review. Normally, these are indicators ~~that where~~ resulted in findings of “satisfactory with recommendations for improvement” or “unsatisfactory” **during the previous IMPEP review.** ~~A~~ **The review team will conduct an evaluation** of the program’s response to previous IMPEP review recommendations dealing with these indicators. **The team will recommend to the MRB whether these recommendations** may be closed out **or remain open** ~~by the IMPEP team and MRB.~~ Additional recommendations for these indicators may also be developed during the follow-up review. The team may also make recommendations for changes to review findings for these indicators.
2. For Agreement State follow-up reviews, the radiation control program must also be considered as a whole, even during a limited scope follow-up review. To accomplish this goal, the meeting agenda in ~~STP~~ **FSME** Procedure SA-116, *Periodic Meetings with Agreement States*, will be followed (the normal schedule for periodic meetings outlined in SA-116 should not be followed, if a follow-up review is conducted). ~~Consistent with the periodic meeting procedure, though all common and applicable non-common performance indicators should be discussed;~~ **Any** recommendations **from previous IMPEP reviews could** ~~should only~~ be closed **during** for indicators that are fully reviewed and evaluated by the team ~~as part of the follow-up IMPEP reviews.~~
3. A radiation control program experiencing serious **weaknesses** ~~difficulties~~ because of the loss of key staff, loss of operating funds, or other acute problems may receive a follow-up IMPEP review that focuses on all

aspects of the program. All common and applicable non-common performance indicators will be reviewed during a full follow-up IMPEP review. A follow-up IMPEP review of this type should be conducted for a program that does not receive satisfactory findings for the majority of the performance indicators.

**B. Assignment of Personnel For Follow-up IMPEP Reviews**

1. With the exception of the RSAO, team members should be different from those who conducted the previous IMPEP review. ~~For Agreement State follow-up IMPEP reviews, the RSAO will be a member of the follow-up review team.~~
2. Assignment of staff to specific performance indicators will be in accordance with the qualifications established in MD 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*.
3. Team members should be chosen to evaluate the indicator(s) based on the scope of the review. Team size should be appropriate to cover all designated indicators, as well as to discuss remaining program areas. If a team consists of three team members or more, at least one member should be an Agreement State representative.
4. The criteria for selecting team members established in STP FSME Procedure SA-100 should be followed in choosing team members for a follow-up review.

**C. Scheduling Follow-up IMPEP Reviews**

Follow-up review scheduling should be completed along with routine scheduling as detailed in STP FSME Procedure SA-100 and should follow the time frame reflected in the previous final IMPEP report or as directed by the MRB. Follow-up reviews are normally performed approximately one year following either the previous IMPEP review, *periodic meeting* or MRB meeting.

**D. Scheduling Letter and Review Questionnaire**

1. The team leader should send a letter to the Radiation Control Program Director or the NRC Regional Director, Division of Nuclear Materials Safety (DNMS) at least 60 days prior to the follow-up review. The letter

should reference the discussion which established the review date, detail the dates of the program review, and request the Radiation Control Program Director **or Regional DNMS Director** to schedule a closeout meeting of appropriate senior State managers or NRC Regional Administrator for the purpose of discussing the results of the review.

- a. The closeout meeting should take place on the final day of the review.
- b. ~~For Agreement States,~~ Copies of the letter should be sent to **the** team members, **the** IMPEP Project Manager, **the** NRC Regional State Liaison Officer, **the** RSAO, and the **Division** Director, **STP DMSSA**.
- c. ~~For Regional reviews, copies of the memorandum should be sent to the team members, NMSS IMPEP contact and the Director, HMNS.~~

2. The team leader and the Radiation Control Program Director or Regional Director, DNMS should agree if a questionnaire is necessary. If appropriate, the letter should include a current IMPEP questionnaire. The questionnaire may be modified to include only those questions dealing with the indicator(s) applicable to the review. In addition to the printed version of the questionnaire, an electronic copy should also be provided. (See Appendix A for sample letter for Agreement State follow-up IMPEP reviews.)

E. Preparation ~~f~~For Follow-up IMPEP Reviews

Guidance for review preparation can be found in **STP FSME** Procedure SA-100.

F. Entrance Meeting

Guidance for entrance meetings can be found in **STP FSME** Procedure SA-100.

G. On-site Review

1. Guidance for conducting the on-site portion of a review can be found in **STP FSME** Procedure SA-100. This guidance should be applied to only the specific indicators that are receiving a complete review.



2. Guidance for conducting the other aspects of the follow-up review can be found in **STP FSME** Procedure SA-116.

#### H. Third Party Attendance in Reviews

Guidance for third party attendance, such as public or media representatives, at reviews can be found in **STP FSME** Procedure SA-100.

#### I. Summarizing Review Findings

Guidance for summarizing review findings can be found in **STP FSME** Procedure SA-100.

#### J. Draft Reports

1. ~~The team leader is responsible for preparing the draft report following a follow-up IMPEP review. (See Appendix B for sample draft report cover letter and boiler plate draft Agreement State follow-up report).~~
2. ~~For Agreement States:~~
  - a. The review team members should complete their ~~portions~~ **assigned sections** of the draft report and submit them to the team leader within 7 **calendar days** of the exit meeting (NOTE: Calendar days, not work days). **Any changes to this working schedule should be agreed upon between the team leader and the IMPEP Project Manager.**
  - ~~b~~2. The team leader is responsible for integrating the information from the team members, **preparing the draft report**, and submitting both, the follow-up IMPEP draft report and **transmittal** letter ~~to the State requesting factual comments or memorandum to the IMPEP Project Manager~~ within 17 **calendar days** of the exit meeting. **(See Appendix B for sample draft report transmittal letter and boiler plate draft Agreement State follow-up report).**
  - ~~c~~3. The draft follow-up report and ~~cover~~ **transmittal** letter, **or memorandum, signed by the team leader** should be dispatched **to the State or Region** within 30 **calendar** days following the exit

meeting. ~~The review report shall be prepared and signed out by the team leader.~~

- d4. The administrative staff for the team leader will be responsible for the administrative aspects of the draft report. For the proposed final, if necessary and the final review report, a secretary, ~~STP~~ **FSME**, will be designated as lead secretary for that follow-up IMPEP review and will work with the team leader in issuing the proposed final and final review reports.

3. ~~For NRC Regions:~~

- ~~a. The review team should complete their portions of the draft report and submit them to the team leader within 5 calendar days of the exit meeting.~~
- ~~b. The team leader is responsible for integrating the information from the team members and submitting both the IMPEP draft report and letter to the Region requesting factual comments to the Division Director, IMNS within 7 days of the exit meeting.~~
- ~~c. The draft follow-up report and cover letter should be dispatched within 30 days following the exit meeting. The draft follow-up review report shall be prepared by the team leader for concurrence by IMNS, and shall be signed out by the team leader.~~

45. The State or NRC Region will be requested to review the draft follow-up report and address any factual errors or misstatements within 30 days **4 weeks from receipt of the transmittal letter/memorandum.**

K. Proposed Final Reports, MRB Meetings, Final Reports, and Follow-up Actions

1. **The proposed final report and MRB meeting agenda will be submitted to the MRB at least seven days before the meeting. A copy of the Agreement State's or NRC Region's comments on the draft report will accompany the proposed final report. Specific guidance on the preparation of proposed final reports is contained in FSME Procedure SA-106.**
- a. ~~The follow-up IMPEP review covered all indicators;~~

- ~~\_\_\_\_\_ b. The program under review did not make sufficient progress towards making program improvements or has experienced additional or more severe problems in performance; or~~
- ~~\_\_\_\_\_ c. The follow-up IMPEP review revealed substantial changes in program performance such as a change in an indicator rating.~~
- 2. An MRB meeting ~~should~~ **to discuss the follow-up IMPEP review findings will** be held in association with a follow-up IMPEP review if: **approximately 74 days after the exit meeting. Specific guidance on conducting MRB meetings is contained in FSME Procedure SA-106.**
- 3. **Issuance of Final Reports and Follow-up Actions**
  - a. **The IMPEP Project Manager, in consultation with the team leader, is responsible for preparation of the final review report and letter for the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs signature. (See Appendix C for a sample letter to issue final reports.)**
  - b. **Additional guidance on the issuance of final reports and follow-up actions can be found in FSME Procedure SA-100, Appendix C.**

~~For follow-up reviews where an MRB meeting is not held:~~

- ~~\_\_\_\_\_ a. The team leader will prepare the final IMPEP report for concurrence by the MRB members and signature by Deputy Executive Director for Materials, Research, and State Programs. (See Appendix C for sample Agreement State letter to accompany final report. A similar memorandum to the Regional Administrator will be developed by team leader for Regional final IMPEP reports.)~~
- ~~\_\_\_\_\_ b. This report will be distributed to the MRB members, including an Agreement State Liaison with a two week deadline for comments/concurrence. If a questionnaire was used, a copy of the completed questionnaire will be included as background with the concurrence package.~~

- ~~c. Additional guidance on the issuance of final reports and follow-up actions found in STP Procedure SA-100 may be used once concurrence has been achieved.~~
- ~~d. Responses to comments made in the follow-up final report will be evaluated by the team leader in consultation with the review team as needed.~~
- ~~e. An acknowledgment letter shall be prepared by the team leader for review and signature within 30 days after the team leader reviews the State or NRC Regional responses. A sample acknowledgment letter is shown in Appendix D.~~
- ~~3. For follow-up reviews where an MRB meeting is held:~~
  - ~~a. Upon review of the State or Region response to the draft report, the team leader will be responsible for making any appropriate corrections, developing a team recommendation regarding the program for the MRB, and submitting the proposed final report to the MRB for its consideration. If the comments are extensive, a separate comment resolution document should be prepared by the team leader for submittal to the MRB. Contact the IMPEP Project Manager for additional guidance on format.~~
  - ~~b. The lead secretary, STP will schedule the MRB for Agreement State reviews in consultation with the team leader per STP Procedure SA-106. A copy of the State's or NRC Region's comments on the draft report will accompany the proposed final report presented to the MRB.~~
  - ~~c. Specific guidance on conducting MRB meetings and the preparation of proposed final reports is contained in STP Procedure SA-106.~~
  - ~~d. Additional guidance on the issuance of final reports and follow-up actions can be found in STP Procedure SA-100. (See Appendix C.)~~
  - ec.** Responses to comments in the follow-up final report will be evaluated by the team leader in consultation with the review team as needed.

- fd. An acknowledgment letter shall be prepared by the team leader for review and signature by Deputy Executive Director for Materials, **Waste**, Research, ~~and~~ State, **Tribal and Compliance** Programs within 30 days after the team leader receives the State or NRC Regional responses. (See Appendix D.)

## **VI. APPENDICES**

- Appendix A - Sample letter scheduling a follow-up IMPEP review.  
Appendix B - Sample ~~transmittal~~ draft report cover letter and boilerplate draft follow-up report.  
Appendix C - Sample letter for final report.  
Appendix D - ~~Sample acknowledgment letter.~~  
Appendix E - Frequently Asked Questions

## **VII. REFERENCES**

13. ~~STP~~ **FSME** Procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*.  
24. ~~STP~~ **FSME** Procedure SA-106, *The Management Review Board*.  
31. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program*.  
5. **FSME** Procedure SA-116, *Periodic Meetings with Agreement States Between IMPEP Reviews*  
52. NRC Management Directive 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*.  
6. ~~STP~~ **FSME** Procedure SA-122, Heightened Oversight.

## **VII. ADAMS Reference Documents**

The previous revisions of SA-119 and correspondence can be found in the Agencywide Documents Access and Management System (ADAMS) as follows:

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS ML #</u>
11/07/2002	STP-02-079, Opportunity to Comment on Draft STP Procedure SA-119, "Follow-up IMPEP Reviews"	ML023110511
11/07/2002	Memorandum to M. Virgilio, S. Treby, G. Pangburn, D. Collins, M. Dapas, & K. Brockman re: Draft STP Procedure SA-119, "Follow-up IMPEP Reviews"	ML023110521
11/07/2002	Opportunity to Comment on Draft STP Procedure	ML031740410

SA-119, Follow-up IMPEP Reviews” (Responses to  
STP-02-079)

04/04/2003

Summary of Comments on STP Procedure SA-119,  
Follow-up IMPEP Reviews

ML031710815

## Appendix A

### Sample Letter Scheduling a Follow-Up IMPEP Review

[RADIATION CONTROL PROGRAM DIRECTOR]

Dear [*Radiation Control Program Director*]:

As you are aware, NRC is using the Integrated Materials Performance Evaluation Program (IMPEP) for the evaluation of Agreement State Programs. Per our discussion, I will be the team leader for the follow-up IMPEP review of the [STATE] program scheduled for the week of [DATE]. The team will include [*Names of IMPEP team members, Title, NRC or State affiliation*].

On [DATE OF ORIGINAL MRB MEETING] the Management Review Board (MRB) met to consider the [proposed final IMPEP/periodic meeting] report on the [STATE] Agreement State Program. During the meeting, the MRB directed that a follow-up review be conducted in [TIME FRAME] that focused on the State's [*complete program or INDICATOR(S) BEING REVIEWED*].

In accordance with the MRB's recommendation, the scope of this follow-up review will be limited to an assessment and evaluation of your [INDICATOR(S) BEING REVIEWED]. In addition to a review of select casework completed since the [DATE OF LAST IMPEP REVIEW] IMPEP review, the team will review your actions in response to the [NUMBER] recommendations made for this/these indicator(s).

---

~~I request that you provide a response to questions~~ Enclosed is an abridged version of the IMPEP questionnaire containing questions [QUESTION NUMBERS] of the IMPEP Questionnaire. This document can be found in ADAMS (MLXXXXXXXXX). I ask that you send your responses by Internet to me at ([TEAM LEADER'S INTERNET ADDRESS]) ~~to me by not later than~~ [DATE - TWO WEEKS PRIOR TO THE REVIEW].

[OR]

Based on information gathered to this date and, as previously agreed with you, I am not requesting a response to the IMPEP Questionnaire."

---

~~Also I have~~ included with the ~~is letter-questionnaire~~ is a list of documents that the team requests be made available to facilitate its review. We encourage States to have these documents prepared prior to the IMPEP team's arrival.

The team will also discuss the actions that the [STATE] program has taken for the remaining recommendations from the [DATE OF LAST IMPEP REVIEW] IMPEP review. These discussions will not be a formal assessment of the balance of your Agreement State Program. The team will use this guidance in STP Procedure SA-116, "Periodic Meetings with Agreement States Between

IMPEP Reviews,” for conducting these discussions. This procedure was distributed to you and can also be found on the STP web site.

~~{OR}~~

~~Enclosed is the document, "Integrated Materials Performance Evaluation Program Questionnaire." The questionnaire is being furnished to you on a computer disk as well as in printed form. I ask that you send your responses by Internet to (~~TEAM LEADER'S INTERNET ADDRESS~~) or return the disk to me by ~~[DATE - 2 WEEKS PRIOR TO REVIEW]~~. I am sending the document and disk in advance of the IMPEP review in order to provide time for you to allocate the staff resources necessary to complete the document by the due date. Part A of the questionnaire contains questions on the common performance indicators. Part B contains questions on the non-common performance indicators for Agreement States.~~

~~Also included with the questionnaire is the document "Materials Requested to Be Available for the Onsite Portion of an IMPEP Review." We encourage States to have the items listed prepared prior to the IMPEP team's arrival.~~

I request that you set up an appointment with the appropriate State Senior Management Official to discuss the results of the follow-up IMPEP review of the [STATE] program on [LAST DAY OF IMPEP REVIEW].

If you have questions, please call me at [team leader phone number].

Sincerely

[TEAM LEADER]

Enclosures:  
As stated

cc: [STATE HEALTH OFFICER OR APPROPRIATE SENIOR STATE MANAGEMENT]

Distribution:

DCD (SP01)

[Regional or Office distribution]



## Appendix B

### Sample Draft Report Cover Letter and Boilerplate Draft Follow-up Report

[NAME]  
[TITLE, STATE SENIOR MANAGEMENT]  
[ADDRESS]

Dear [NAME]:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the evaluation of Agreement State programs. Enclosed for your review is the draft follow-up Integrated Materials Performance Evaluation Program (IMPEP) report which documents the results of the Agreement State follow-up review held in your office on [DATES]. I was the team leader for the [STATE] review. The review team's preliminary findings were discussed with you and your staff on ~~the last day of the review~~ [DATE].

[SHORT DESCRIPTION OF THE CURRENT STATUS OF THE PROGRAM INCLUDING PROGRESS AND AREAS STILL IN NEED OF IMPROVEMENT]. The follow-up review team recommends that the [STATE] Agreement State program ~~undergo a~~ [FULL IMPEP REVIEW/FOLLOW-UP IMPEP REVIEW] in FY [YEAR].

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the draft follow-up IMPEP team report for review prior to submitting the report to the Management Review Board (MRB). We welcome your comments on the draft report. If possible, we request comments within four weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner that will be responsive to your needs.

The team will review the response, make any necessary changes to the report and issue it to the MRB as a proposed final report. Our preliminary scheduling places the [STATE] MRB meeting in the [WEEK - 74 DAYS FROM THE REVIEW]. We will coordinate with you to establish the date for the MRB review of the [STATE] report and will provide invitational travel for you or your designee to attend. NRC has video conferencing capability if it is more convenient for the State to participate through this medium. ~~We will work with your staff to establish a video conference if you so desire~~ Please contact me if you desire to establish a video conference for the meeting.

{OR}

~~The team will review the response, make any necessary changes to the report and issue it to the MRB as a final report.~~

~~If you have any questions concerning the IMPEP process for senior NRC management prior to the consideration by the MRB on the follow-up review results, please contact Paul Lohaus, Director, Office of State and Tribal Programs at (301) 415-3340. If you have any questions regarding the~~

~~enclosed report, please contact me at [PHONE NUMBER].~~ If you have any questions regarding the enclosed report, please contact me at 301-415-XXXX.

Thank you for your cooperation.

Sincerely,

[Team Leader]

Enclosure:  
As stated

cc: [NAME, RADIATION CONTROL PROGRAM, STATE]  
[STATE LIAISON OFFICER]

Distribution:

DIR RF	DCD (SP01)
<del>Senior Program Analyst, NMSS</del>	PDR (YES√)
[IMPEP TEAM MEMBERS]	
IMPEP Project Manager, <del>STP</del> DMSSA	
<del>HMNS Director</del>	
DMSSA Director	
SAIB Branch Chief	
ASPO	
OGC	
[STATE] File	

**DOCUMENT NAME: G:\IMPEP\YYYYDRLTR.ST.WPD; G:\IMPEP\STIMPYYYY.DFT.WPD**

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP	STP:DD	STP:D
	FSME/RSAO		

NAME [TEAM LEADER]:

DATE

INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM  
FOLLOW-UP REVIEW OF THE [STATE] AGREEMENT STATE PROGRAM

[DATES OF ON-SITE REVIEW]

## Draft Report

U. S. Nuclear Regulatory Commission

This report presents the results of the follow-up review of the [STATE RADIATION CONTROL PROGRAM], conducted [DATES OF ON-SITE REVIEW]. This follow-up review was directed by the Management Review Board (MRB) based on the results of the [DATES OF LAST FULL IMPEP REVIEW] [Integrated Materials Performance Evaluation Program (IMPEP) review/ **periodic meeting**]. The MRB directed that a follow-up review of the [ENTIRE PROGRAM OR LIST SPECIFIC INDICATORS], be conducted in **[time frame]** ~~one year~~ based on the [DETAILS OF THE PROGRAM DEFICIENCIES]. [The follow-up review also included evaluation of actions taken by the State to address the {#} recommendations made during the {DATES OF LAST FULL IMPEP REVIEW} IMPEP review.]

The follow-up review was conducted by a review team consisting of technical staff members from the Nuclear Regulatory Commission (NRC) and the State of [STATE TEAM MEMBER'S HOME STATE]. Team members are identified in Appendix A. The follow-up review was conducted in accordance with the November 5, 1999, NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)."

[A paragraph on the results of the MRB meeting, if convened will be included in the final report. If there is not a formal MRB meeting convened, a summary of the final results of the review will be included.]

[GIVE A SHORT DESCRIPTION OF THE IMPROVEMENTS/LACK OF IMPROVEMENTS SINCE THE LAST IMPEP REVIEW]

The [STATE] Agreement State program is administered by the [DETAILS ABOUT THE ORGANIZATION OF THE PROGRAM]. The organizational chart for the [PROGRAM] is presented in Appendix B. At the time of the follow-up review, the [STATE] program regulated approximately [#] specific licenses [INCLUDE ANY PERTINENT INFORMATION].

[Prior to the follow-up review, the NRC conducted a heightened oversight program for the {STATE} program. The program included {STATE} developing and submitting a program improvement plan in response to the {YEAR} IMPEP review, followed by bimonthly conference calls with NRC. Conference calls were held [DATES]. The communications for the heightened oversight program are in Appendix C to this IMPEP report. [STATE]'s actions and their status were reviewed in preparation for this follow-up review.]

The review team's approach for conducting the follow-up review consisted of: [ (1) examination of the [PROGRAM'S] actions during the period of heightened oversight;] (2) in-depth review of the [# program indicators identified above OR program] for the period of [REVIEW PERIOD]; [(3) field accompaniments of {#} Division inspectors;] (4) discussion of the status of the [PROGRAM]'s actions to address the [#] recommendations in the [YEAR] report; and (5) interviews with staff and management to answer questions or clarify issues. The team evaluated

the information that it gathered against the IMPEP performance criteria for the ~~three~~ **[#]** common

performance indicator(s), and ~~one~~ [#] non-common performance indicator(s), for activities conducted during the period of [REVIEW PERIOD]. Preliminary results were discussed with [STATE] management on [DATE].

Section 2 below discusses the results of the follow-up review of the [STATE] program for the [#] common performance indicator[s]. [Section 3 below discusses the results of the follow-up review of the {STATE} program for the[#] non-common performance indicator{s}.] Section 4 summarizes the review team's findings and recommendations resulting from the follow-up review. [The {PROGRAM'S} progress in addressing other recommendations from the [YEAR] review and general status of the program covered in a periodic meeting can be found in Appendix D.]

## 2.0 COMMON PERFORMANCE INDICATORS

The follow-up review addressed [#] of the five common performance indicators used in reviewing both NRC Regional and Agreement State programs. The [#] indicators are: [LIST APPLICABLE INDICATORS].

### 2.31 Technical Staffing and Training

During the follow-up review, the review team evaluated actions taken by the [PROGRAM] in response to the finding of [RATING] made during the [YEAR] IMPEP review, as well as the status of ~~the status of~~ the staffing and training of the [PROGRAM].

Issues central to the evaluation of this indicator include the Office's staffing level and staff turnover, as well as the technical qualifications and training histories of the staff. To evaluate these issues, the review team examined the Office's questionnaire responses relative to this indicator, interviewed Office management and staff, reviewed job descriptions and training records, and considered any possible workload backlogs.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

#### Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT]

#### Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the staffing and training program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Technical Staffing and Training, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].

## 2.12 Status of Materials Inspection Program

During the follow-up review, the review team evaluated actions taken by the [PROGRAM] in response to the finding of [FINDING] made during the [YEAR] IMPEP review, as well as the status of the inspections performed since the [YEAR] review, and the current status of due and overdue inspections.

The team reviewed the timeliness of inspections performed since the last review period, the current and projected backlog of overdue inspections, and timeliness in communication of inspection results to licensees. The team reviewed data provided by the [PROGRAM] from their inspection tracking system to determine the timeliness of inspections, and reviewed inspection files to determine the date of the issuance of inspection results to licensees relative to the date of inspection.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

### Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT]

### Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY

BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the materials inspection program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Status of Materials Inspection Program, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].

## 2.23 Technical Quality of Inspections

During the follow-up review, the review team evaluated actions taken by the [PROGRAM] in response to the finding of [RATING] made during the [YEAR] IMPEP review, as well as the status of the technical quality of inspections performed since the [YEAR] review.

The team evaluated inspection reports, enforcement documentation, and inspection field notes, interviewed inspectors for [#] inspections conducted during the review period, and conducted [#] inspector accompaniments. The casework included [#] of the [PROGRAM'S] materials license inspectors, and covered inspections of various types of licensees including [LIST TYPES]. Appendix E lists the inspection casework files reviewed for completeness and adequacy and accompaniments including case-specific comments.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

### Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT]

### Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the technical quality of the inspection program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR

THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Technical Quality of Inspections, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].

During the follow-up review, the team evaluated actions taken by the State in response to the recommendations for improvement noted during the [YEAR] review, as well as new licensing actions completed since that review. The team reviewed licensing actions, deficiency correspondence, and checklists for [#] licensing actions.

Licenses were reviewed for accuracy, appropriateness of the license and its conditions, tie-down conditions, and overall technical quality. Casework was evaluated for timeliness, adherence to good radiation safety practices, references to appropriate regulations, documentation of safety evaluation reports, product certifications or other supporting documents, pre-licensing visits, peer or supervisory review as indicated, and proper signature authority. The files were checked for retention of necessary documents and supporting data.

The [#] license files selected for review included work by all reviewers. The cross-section sampling included all of the State's major licenses as defined by the State, including the following types of licenses: [TYPES OF LICENSES]. Licensing actions during the review period included [#] new and [#] amendments (including terminations) totaling [#] licensing actions. A list of the licenses reviewed with case-specific comments can be found in Appendix F.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT]

Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the technical quality of the licensing program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Technical Quality of Licensing Actions, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].



2.5 Response to **Technical Quality of Incidents and Allegations Activities**

During the follow-up review, the team evaluated actions taken by the [PROGRAM] in response to the finding of [RATING] made during the [YEAR] IMPEP review, as well as the status of the [PROGRAM'S] performance since the [YEAR] review.

The team reviewed [ANY SPECIFIC MATERIALS] and examined [#] investigations completed during the review period. A list of the incident casework examined with the case-specific comments is included in Appendix G. The team also reviewed the [PROGRAM'S] response to [#] allegations involving radioactive materials, including [#] allegations referred to the [PROGRAM] by the NRC during the review period.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT] INDIVIDUALLY

Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the [PROGRAM'S] incident and allegation response program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Response to Incidents and Allegations, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].

### 3.0 NON-COMMON PERFORMANCE INDICATORS

The follow-up review addressed [#] of the non-common performance indicators used in reviewing NRC Regional and Agreement State programs. The [#] indicators are: [LIST APPLICABLE INDICATORS].

#### 3.1 Legislation and Program Elements Required for Compatibility Requirements

##### 3.1.1 Legislation

The review team noted that no legislation affecting the radiation control program was passed since the previous review in which the State legislation was found adequate. Legislative authority to create an agency and enter into an agreement with the NRC is granted in [DETAILS]. The [PROGRAM] is designated as the State's radiation control agency.

##### 3.1.2 Program Elements Required for Compatibility

The [STATE] radiation control program's regulations are found in [REGULATIONS], and apply to all ionizing radiation from agreement materials, machine produced radiation, and naturally-occurring and accelerator-produced materials. [STATE] requires a license for possession, and use, of all radioactive material including naturally occurring materials, such as radium, and accelerator-produced radionuclides.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

#### Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT] INDIVIDUALLY

#### Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the [PROGRAM'S] regulation adoption program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, [CONTINUES TO BE FOUND {RATING}]

OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}}].

### 3.2 Sealed Source and Device Evaluation Program

In conducting this review, three sub-indicators were used to evaluate the Program's performance regarding their SS&D Evaluation Program. These sub-indicators include:

- (1) Technical Quality of the Product Evaluation; (2) Technical Staffing and Training; and
- (3) Evaluation of Defects and Incidents Regarding SS&Ds.

[In assessing the SS&D Evaluation Program, the review team examined the information provided in the supplement to questions 31 [#] through 33 [#] of the 1999 [YEAR] IMPEP questionnaire response from {STATE}.] The team also evaluated actions taken by the State in response to the recommendations noted during the [YEAR] review, as well as new SS&D evaluations completed since that review, deficiency letters, and supporting documents.

#### 3.2.1 Technical Staffing and Training

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

##### Recommendation [#]

[ RECOMMENDATION FROM THE PREVIOUS REPORT] INDIVIDUALLY

##### Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

#### 3.2.2 Technical Quality of the Product Evaluation Program

The team reviewed a total of [#] certificates in the follow-up review which included: [LIST OF CERTIFICATE TYPES REVIEWED]. The review of the six certificates from the [YEAR] IMPEP report was limited to the [PROGRAM'S] actions in addressing previously identified comments. The SS&D registration certificates evaluated by the review team are listed with case-specific comments in Appendix H.

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

Recommendation [#]

[RECOMMENDATION FROM THE PREVIOUS REPORT] INDIVIDUALLY

Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

3.3 Evaluation of Defects and Incidents Regarding SS&Ds

The review team's evaluation of the [PROGRAM'S] response to the [#] recommendation[s] is presented below.

Recommendation [#]

[RECOMMENDATION FROM THE PREVIOUS REPORT] INDIVIDUALLY

Current Status

[GIVE A FULL EXPLANATION OF THE REVIEW COMPLETED AND THE TEAM'S FINDINGS INCLUDING THE IMPROVEMENTS OF THE PROGRAM, AND WHETHER THE RECOMMENDATION SHOULD BE CLOSED. NEW RECOMMENDATIONS MAY BE MADE AS WELL. LIST EACH RECOMMENDATION. ]

Based on the follow-up review, the team considers [DESCRIBE WHETHER THE TEAM BELIEVES THAT THE RECOMMENDATION(S) CAN BE CLOSED OR SHOULD REMAIN OPEN AND WHY]

The review team concludes that the [PROGRAM'S] SS&D evaluation program has [DESCRIBE THE PROGRAM'S PERFORMANCE/IMPROVEMENTS/LACK OF IMPROVEMENT FOR THIS INDICATOR]. Based on the IMPEP evaluation criteria, the review team recommends that [STATE]'s performance with respect to the indicator, Sealed Source and Device Evaluation Program, [CONTINUES TO BE FOUND {RATING} OR SHOULD BE CHANGED FROM {OLD RATING} TO {NEW RATING}].

#### 4.0 SUMMARY

The follow-up review team evaluated [STATE]'s performance in responding to [DETAILS OF INDICATOR RATINGS] and resolving the specific recommendations made during the [YEAR] IMPEP review [FOR THE {#} COMMON AND {#} NON-COMMON PERFORMANCE INDICATORS, {LIST INDICATORS}]. The follow-up review team concludes that [CONCLUSIONS OF REVIEW TEAM]. Based on this information, the review team recommended that the [STATE] program be found [ADEQUACY AND COMPATIBILITY RATINGS].

[DETAIL THE TEAM'S RECOMMENDATIONS AS TO WHAT STEPS SHOULD BE NEXT]

Below is a summary list of the open recommendation[s] from the [#] report [and the new recommendations from this follow-up review].

Recommendations from the [YEAR] report:

[LIST RECOMMENDATIONS INDIVIDUALLY]

[Recommendations from this review:]

[LIST RECOMMENDATIONS INDIVIDUALLY]

## LIST OF APPENDICES

Appendix A	IMPEP Follow-up Review Team Members
Appendix B	[PROGRAM] Organizational Chart
[Appendix C	Heightened Oversight Program Correspondence]
[Appendix D	Periodic Meeting Summary Including Status of Other Recommendations from the Previous Review]
[Appendix E	Inspection Casework Reviews and Accompaniments]
[Appendix F	Licensing Casework Reviews]
[Appendix G	Incident Casework Reviews]
[Appendix H	Sealed Source and Device Evaluation Casework Reviews]

[NOTE: FOR CURRENT FORMAT FOR CASEWORK APPENDICES, PLEASE SEE ~~STP~~  
**FSME** PROCEDURE SA-100]

## APPENDIX A

### IMPEP REVIEW TEAM MEMBERS

<b>Name</b>	<b>Area of Responsibility</b>
[TEAM LEADER, PROGRAM]	Team Leader [INDICATOR{S}]
[TEAM MEMBER, PROGRAM]	[INDICATOR{S}]
[TEAM MEMBER, PROGRAM]	[INDICATOR{S}]

APPENDIX B

[STATE] ORGANIZATIONAL CHART

(ADAMS ACCESSION NUMBER: ML[#])



## APPENDIX C

### HEIGHTENED OVERSIGHT PROGRAM CORRESPONDENCE

Minutes of Bimonthly Conference Calls:

1. [DATE] conference call minutes.
2. [DATE] conference call minutes.
3. [DATE] conference call minutes.
4. [DATE] conference call minutes.

Letters from/to [STATE]:

[LIST EACH CORRESPONDENCE WITH THE STATE SINCE THE PREVIOUS IMPEP REVIEW INDIVIDUALLY. ATTACH MINUTES FROM EACH CALL.

## APPENDIX D

### PERIODIC MEETING SUMMARY INCLUDING STATUS OF OTHER RECOMMENDATIONS FROM THE PREVIOUS REVIEW

A periodic meeting was held with [PROGRAM] management by [TEAM LEADER], Team Leader, and [RSAO], Regional State Agreements Officer, during the follow-up review pursuant to ~~STP~~ **FSME** Procedure SA-116, “Periodic Meeting with Agreement States Between IMPEP Reviews.” Those topics normally documented during the periodic meeting that were reviewed and documented as part of the follow-up review will not be discussed in this Appendix. The following topics were discussed.

#### Action on Previous Review Findings

The [MONTH AND YEAR] IMPEP report made [#] recommendations for action by the [PROGRAM]. [#] of these recommendations were discussed in earlier sections under their respective indicators. The status of the remaining [#] comments is discussed below.

#### Recommendation [#]

[RECOMMENDATION]

#### Current Status

[BRIEF OVERVIEW OF WHAT THE PROGRAM HAS DONE]

#### Recommendation [#]

[RECOMMENDATION]

#### Current Status

[BRIEF OVERVIEW OF WHAT THE PROGRAM HAS DONE]

#### Program Strengths and/or Weaknesses

#### Feedback on NRC’s Program

#### Status of Program and/or Policy Changes

Impact of NRC Program Changes

Internal Program Audits and Self-Assessments

Status of Allegations Previously Referred

Nuclear Material Events Database (NMED) Reporting

# APPENDIX C

## Sample Letter for Final Report

[NAME]  
[TITLE, STATE SENIOR MANAGEMENT]  
[ADDRESS]

Dear [NAME]:

On [DATE], the Management Review Board (MRB) met to consider the proposed final Integrated Materials Performance Evaluation Program (IMPEP) report on the [STATE] Agreement State Program. The MRB found the [STATE] program [ADEQUATE TO ASSURE PUBLIC HEALTH AND SAFETY/ADEQUATE, BUT NEED IMPROVEMENT] and [COMPATIBLE/NOT COMPATIBLE] with NRC's program.

{OR}

~~Enclosed is the final report of the follow-up Integrated Materials Performance Evaluation Program (IMPEP) review of the [STATE] program. The review was conducted by an interoffice team on [DATE]. The team reviewed, in detail, the performance indicators of concern identified during the [YEAR] IMPEP review, [LIST APPROPRIATE PERFORMANCE INDICATORS]. [TEAM LEADER] was the team leader for the follow-up review. The review team recommended, and the Management Review Board (MRB) agreed, that the [STATE] program be found [ADEQUATE TO ASSURE PUBLIC HEALTH AND SAFETY/ADEQUATE, BUT NEED IMPROVEMENT] and [COMPATIBLE/NOT COMPATIBLE] with NRC's program.~~

Section 5.0, page [PAGE NUMBER], of the enclosed final report presents the IMPEP team's recommendations. [WE RECEIVED YOUR [DATE] LETTER WHICH DESCRIBED THE ACTIONS TAKEN IN RESPONSE TO THE TEAM'S RECOMMENDATIONS. WE REQUEST NO ADDITIONAL INFORMATION.] or [WE REQUEST YOUR EVALUATION AND RESPONSE TO THOSE RECOMMENDATIONS WITHIN 30 DAYS FROM RECEIPT OF THIS LETTER.]

Based on the results of the current IMPEP review, the next full review will be in approximately [#] years.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review and your support of the Radiation Control Program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

[NAME]  
Deputy Executive Director  
for Materials, Waste, Research, and State, Tribal  
and Compliance Programs

Enclosure:  
As stated

cc: [NAME, RCP, STATE]  
[SLO]

bcc: [CHAIRMAN]  
[NRC COMMISSIONERS]

Distribution:

DIR RF

IMPEP Project Manager, ~~STP~~ DMSSA

DCD (SP01)

PDR (YES $\sqrt{}$ )

~~Senior Program Analyst, NMSS~~

[IMPEP TEAM MEMBERS]

Director, ~~HMNS~~ DMSSA

RSAO

RSLO

OGC

ASPO

[STATE] File

**DOCUMENT NAME: G:\IMPEP\20## ST Final IMPEP Report and Letter.WPD**

**To receive a copy of this document, indicate in the box:** "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE [OFFICE] ~~STP-DD~~ DMSSA ~~STP-DD~~ FSME DEDMWRSTC

NAME Team Leader

DATE \_\_\_\_\_

## APPENDIX D

### Sample Acknowledgment Letter

[NAME]  
[TITLE, STATE SENIOR MANAGEMENT]  
[ADDRESS]

Dear [NAME]:

Thank you for your letter dated [DATE], responding to our request for an evaluation and response to the recommendations of the final Integrated Materials Performance Evaluation Program (IMPEP) review report for the [STATE] Agreement State Program. We find your responses adequate and will conduct the next IMPEP review in [FY].

We appreciate the positive actions that you and your staff have taken and are continuing to implement with regard to our comments. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

[NAME]  
Deputy Executive Director  
for Materials, **Waste**, Research, **and State, Tribal  
and Compliance** Programs

Enclosure:  
As stated

cc: [NAME, RCP, STATE]  
[SLO]

Distribution:

DIR RF

DCD (SP01)  
(YES✓)

PDR

IMPEP Project Manager, ~~STP~~ **DMSSA**

~~Senior Program Analyst, NMSS~~

[IMPEP TEAM MEMBERS]

RSLO

ASPO

RSAO

Director, ~~HMNS~~ **DMSSA**

OGC

[STATE] File

DOCUMENT NAME: G:\IMPEP\YYYYACKXX.WPD

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE [OFFICE]

~~STP:DD~~ **DMSSA**

~~STP:DD~~ **DMSSA**

**DEDMWRSTC**

NAME Team Leader

DATE

## Appendix E

### Frequently Asked Questions

- Q: If I'm on the review team for a program that is to receive a follow-up review, will I automatically be on the follow-up review team?
- A: ~~Not automatically. We try to have as many of the original team members~~ Original team members **do not** as practical come back to participate on the follow-up review, ~~however it is not a necessity and there are many important factors. The scope of the follow-up review is very important. Only the~~ **RSAO for the State** principle reviewers of the indicators receiving a full review **need is required to** participate in the follow-up review **for an Agreement State. New team members are appointed to participate in follow-up IMPEP reviews since this approach allows for unbiased** Also, in some circumstances, it may be desirable to have a new team member on the follow-up review team to give a different perspectives **on Program past or present performance issues.**
- Q: Will a follow-up review always follow a period of Heightened Oversight?
- A: Generally, a follow-up review will follow a period of Heightened Oversight, although the findings of the follow-up review may not necessarily lead to the end of the Heightened Oversight period.
- Q: How long do I need to hold on to my review materials once the review is over?
- A: Normally, we ask that team members retain their review materials only until the final report is issued. However, if a follow-up review is scheduled, team member should retain their materials until the follow-up review report has been issued.
- Q: What recommendations can be closed out during a follow-up review?
- A: **Any R**recommendations **from previous IMPEP reviews** can **only** be closed out if they are fully evaluated during **a follow-up IMPEP** review. ~~Thus, all recommendations can be closed out during a full follow-up IMPEP review, but the recommendations discussed during the periodic meeting-like portion of a limited scope follow-up review cannot be closed out until the next full IMPEP review.~~



## **STP Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval**

### ***Jurisdiction Determinations - SA-500***

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Issue Date: , 2007

Review Date: , 2010

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~~Paul H. Lohaus~~ **Janet R. Schlueter**  
Director, ~~STP~~ **DMSSA, FSME**

Original signed by:  
~~Paul H. Lohaus~~  
**Janet R. Schlueter**

Date: / /07

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~~Frederick C. Combs~~ **Scott W. Moore**  
Deputy Director, ~~STP~~ **DMSSA, FSME**

Original signed by:  
~~Frederick C. Combs~~  
**Scott W. Moore**

Date: / /07

---

~~Lloyd A. Bolling~~ **Osiris Siurano**  
Procedure Contact, ~~STP~~ **FSME**

Original signed by:  
~~Lloyd A. Bolling~~  
**Osiris Siurano**

Date: / /07

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#### ***NOTE***

***This procedure was formerly issued by the Office of State and Tribal Programs. The (STP) Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of STP this procedures will be distributed for information available through NRC's website.***





## **I. INTRODUCTION**

This procedure describes the process for resolving questions of jurisdiction involving the use of Bbyproduct, Ssource and Sspecial Nnuclear Mmaterial (SNM) within Agreement States; i.e., whether the Nuclear Regulatory Commission (NRC) or an Agreement State is the appropriate licensing agency in certain cases. (NOTE: Federal ownership of land does not necessarily mean that licensees are subject to NRC regulatory control when working on that site).

## **II. OBJECTIVE**

To provide guidance to the Office of Federal and State Materials and Environmental Management Tribal Programs (STP FSME) staff on the handling of jurisdiction determinations involving the use of Bbyproduct, Ssource and SNM within Agreement States.

## **III. BACKGROUND**

Private sector licensees performing work on Federally-owned or Federally-controlled lands within Agreement States are covered by one of the following forms of jurisdiction listed in III.A., below.

### **A. Definitions - Categories of Legislative Jurisdiction<sup>1</sup>**

1. Exclusive legislative jurisdiction - only Federal laws are applicable pursuant to the U.S. Constitution or through cession by a State.
2. Concurrent legislative jurisdiction - the State concerned has reserved to itself the right to exercise concurrently with the Federal government all of the same authority.
3. Partial legislative jurisdiction - the State concerned has granted the Federal government certain of the State's authority but has reserved to

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<sup>1</sup>

More complete definitions are contained in the background and reference folder for this procedure located in the STP Jurisdiction File formerly maintained by the Office of State and Tribal Programs (STP). On October 1, 2006, STP was reorganized into the Office of Federal and State Materials and Environmental Management Programs (FSME).

itself the right to exercise, by itself or concurrently with the Federal government, other authority.<sup>2</sup>

4. Proprietary interest - the Federal government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area.
- B. Jurisdictional determinations are normally made on a case-by-case basis following the guidance set out in Appendix A.
- C. Reservations and General Precedents
1. A Section 274b Agreement, as implemented by 10 CFR Part 150, does not transfer regulatory authority to the States over the following:
    - a. Activities of Federal Agencies located in Agreement States;
    - b. Activities involving special nuclear material in quantities sufficient to form a critical mass;
    - c. Construction and operation of production and utilization facilities, or any uranium enrichment facility;
    - d. Disposal of radioactive wastes into the ocean or sea;
    - e. Transfer of products to persons exempt from licensing;
    - f. Import or export of source, byproduct, and special nuclear material;
    - g. Activities aboard commissioned naval vessels (determined by interpretation, see Reference #4).
  2. On Indian land, there is a presumption that the Section 274b Agreement, as implemented by 10 CFR Part 150, does not transfer regulatory authority to the States for either:

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<sup>2</sup>

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

- a. American Indian owned companies operating on American Indian lands; or
  - b. Private (non-American Indian owned) companies operating on American Indian lands. Consequently, absent NRC written approval, a State may not regulate activities on Indian land. (See V.C. below for guidance on existing licensed facilities.)
- D. The State will exercise regulatory jurisdiction over:
  - 1. Non-Federal licensees using Agreement material in areas of non-exclusive Federal jurisdiction;
  - 2. Radiographers on reactor sites in Agreement States (determined by interpretation, see Reference #5);
  - 3. Calibration standards in Agreement States for off-site monitors around reactors;
  - 4. For activities occurring on American Indian Lands after the date of this guidance, if NRC has provided prior approval in writing, determined by the process set out in IV.B. (also see V. C. below for guidance on existing licensed facilities).
- E. Byproduct Material Intimately Mixed with SNM in quantities sufficient to form a critical mass at facilities within Agreement States:
  - 1. If the facility falls under the definition of "production or utilization facility" in 10 CFR 50.2, the NRC license covers all material;
  - 2. If the facility is neither a "production or utilization facility as defined" in 10 CFR 50.2, nor an uranium enrichment facility, separate licenses issued by the Agreement State and by the NRC cover the byproduct material and the SNM in quantities sufficient to form a critical mass, respectively.
- F. Offshore Operations Outside the Territorial Waters of a State:
  - 1. Persons using byproduct, source, or SNM in offshore waters are not exempt from NRC regulation (10 CFR 150.7).

**IV. ROLES AND RESPONSIBILITIES****A. Procedure for determining jurisdictional status of lands for other than Indian land:**

1. NRC staff with questions on determining the jurisdictional status of lands or facilities should refer to the "NRC Procedure for Determining Exclusive Federal Jurisdiction" (see Appendix A).
2. If a determination cannot be made in accordance with paragraph one, the Federal Agency whose facility is involved shall be contacted. Federal Agency contacts and telephone numbers may be obtained by consulting the Federal Executive Directory or the local telephone directory (the White Pages).
3. If a jurisdiction question arises which involves a Federal Agency for which no contact has been established, inquiries should be directed to those offices (normally in Washington, DC) which maintain the real estate for the Federal Agency.
4. Questions involving jurisdiction should be referred to the NRC's Office of the General Counsel (OGC) for assistance.
5. A jurisdiction file containing appropriate supporting information is maintained by **STP FSME**.

**B. Procedure for determining jurisdictional status of activities on Indian land:**

1. If a State desires to exercise jurisdiction over activities on Indian lands it must apply in writing to the NRC staff providing the basis that it has the requisite legal authority to regulate Atomic Energy Act materials on Indian Lands. Normally, this would require at least a legal analysis prepared by the State Attorney General's Office explaining the basis for the State's position.
2. The NRC staff would seek input from the affected Tribe and any other interested stakeholder such as the applicant for the license, if other than the Tribe.
3. The NRC staff with the assistance of the OGC will make a jurisdictional decision and therefore notify the State, the Tribe and the other stakeholders.

**V. GUIDANCE**

- A. The NRC staff may receive inquiries or questions from licensees on the jurisdictional status of lands or facilities controlled by a Federal Agency. These licensees should be encouraged to contact the Federal Agency controlling the proposed jobsite and to obtain a jurisdiction determination.
- B. Upon obtaining information on the jurisdictional status of the proposed jobsite, the licensee shall be advised to either file for reciprocity to work in NRC Jurisdiction (for Agreement State licensees only) or file for reciprocity with the Agreement State where the work is to be conducted (for NRC licensees or licensees from other Agreement States).
- C. The NRC staff may receive inquiries or questions on the jurisdictional status of activities on Indian lands. NRC will entertain requests from States for determinations as to whether the State may regulate such activities. NRC does not intend to revisit State or NRC decisions, made prior to this guidance, on jurisdiction on Indian lands unless a written request is made.

## **VI. APPENDIX**

Appendix A - NRC Procedure for Determining Exclusive Federal Jurisdiction  
Attachment 1 - Recommended Procedure for Licensees to Obtain Jurisdiction Determinations

## **VII. REFERENCES**

The following documents are located in the background and reference folder for this procedure in the STP Jurisdiction file:<sup>3</sup>

- 1. Memorandum Parler to Shapar, Jurisdiction to Regulate Private Licensees Conducting Activities On Federal Enclaves in Agreement States, May 22, 1963;
- 2. Guide for handling AEC-Agreement State Jurisdictional Problems, September 25, 1965;
- 3. AEC Jurisdiction Over Nuclear Facilities and Materials Under the Atomic Energy Act, Office of the General Counsel Opinion, March 14, 1969;

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<sup>3</sup> Several of these documents are not current. Before using these references, coordinate the review with OGC to assure that aspects of the document to be used are still valid.

- ~~4. All Agreement States – Interpretative Letter No. 76-02, dated October 20, 1976 on commissioned naval vessels;~~
- ~~5. Radiography operations at reactor sites – Memorandum from R.E. Cunningham to Regional Administrators and Branch Chiefs dated September 16, 1983;~~
- ~~6. Reciprocity in Areas of Federal Jurisdiction Within Agreement States, memo from S.A. Treby to C. Kammerer and R. E. Cunningham, dated September 10, 1992;~~
71. NUREG-1556, Volume 19: “Guidance For Agreement State Licensees about NRC Form 241 “Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters” and Guidance For NRC Licensees Proposing to Work in Agreement States Jurisdiction (Reciprocity) (Final Report) Published: November 2000.

2. Energy Policy Act of 2005.

**VIII. ADAMS Reference Documents<sup>4</sup>**

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS ML #</u>
1. 7/8/2002	SA-500: Jurisdiction Determinations	ML020580649
2. 5/22/1963	Memorandum Parler to Shapar, Jurisdiction to Regulate Private Licensees Conducting Activities On Federal Enclaves in Agreement States	ML063410496
3. 9/25/1965	Guide for handling AEC-Agreement State Jurisdictional Problems	ML063410492
4. 3/14/1969	AEC Jurisdiction Over Nuclear Facilities and Materials Under the Atomic Energy Act, Office of the General Counsel Opinion	ML063410490

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<sup>4</sup> Several of these documents are not current. Before using these references, coordinate the review with OGC to assure that aspects of the document to be used are still valid.

- |               |   |             |
|---------------|---|-------------|
| 5. 10/20/1976 | All Agreement States - Interpretative Letter<br>No. 76-02 on commissioned naval vessels   | ML063410484 |
| 6. 9/16/1983  | Radiography operations at reactor sites<br>Memorandum from R.E. Cunningham to<br>Regional Administrators and Branch Chiefs              | ML063410482 |
| 7. 9/10/1992  | Reciprocity in Areas of Federal Jurisdiction<br>Within Agreement States, memo from<br>S.A. Treby to C. Kammerer and<br>R. E. Cunningham | ML063410487 |

# **Appendix A**

## **NRC PROCEDURE FOR DETERMINING EXCLUSIVE FEDERAL JURISDICTION**

### **I. Introduction**

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

### **II. Areas of Exclusive Federal Jurisdiction**

An area of exclusive Federal jurisdiction is an area over which the Federal government exercises legal control without interference from the jurisdiction and administration of State law. The creation of an area of exclusive Federal jurisdiction occurs as a result of State consent at the time the Federal government acquires control over the land.

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

### **III. Responsibilities and Procedures**

Jurisdiction determination requests or questions should be handled utilizing one of the following approaches:

- A. In response to inquiries or questions on jurisdictional status, the licensee should be asked to determine, from their Federal Agency contact at the site or the facility where the work is to occur, the jurisdictional status of the areas where the licensee plans to work. See Attachment 1, "Recommended Procedure for Licensees to Obtain Jurisdiction Determinations," for guidance to be followed by licensees proposing to work at Federally-controlled jobsites in Agreement States. If the area is under exclusive Federal jurisdiction, an Agreement State licensee should obtain, if practicable, a written statement from the Federal facility to that effect and submit the statement along with the reciprocity notification or application to the appropriate NRC regional office. An Agreement State licensee may not work in areas of exclusive Federal jurisdiction without either: (1) filing a Form 241 in accordance with 10 CFR 150.20(b), "Recognition of Agreement State Licensees;" or (2) by applying for a specific NRC license.



- B. If a licensee has been unable to obtain a jurisdictional determination on a proposed Federally-controlled jobsite or is unable to identify a local or regional Federal Agency representative, the NRC staff (Regional or Headquarters) should direct the licensee to contact the appropriate Federal Agency headquarters contact for assistance in identifying the name of the appropriate local or regional representative the licensee should contact to obtain the determination. Federal Agency headquarters contacts and telephone numbers may be obtained by consulting the Federal Executive Directory or the local telephone directory (the White Pages).
- C. An NRC licensee planning to conduct operations at a Federal facility, where the Agreement State has jurisdiction (i.e., it is not an area of exclusive Federal jurisdiction), must file for reciprocity with the Agreement State regulatory authority in accordance with the State's regulations or obtain a specific license from that State. Agreement State radiation control program contacts may be accessed on the Office of ~~Federal and State Materials and Tribal Environmental Management~~ Programs (FSME) Web Site. at: <http://www.hsrdoornl.gov/nrc/asframedirectr.htm>.
- D. American Indian owned companies and non-American Indian owned companies proposing to use Agreement materials on American Indian owned (Treaty) lands, should be directed to the appropriate NRC Regional Office as stated in NUREG-1556, Volume 19, Section 2.4. Jurisdictional determinations on questions involving American Indian lands will be reviewed and handled on a case-by-case basis.
- E. Naturally Occurring ~~Radioactive Material (NORM)~~, other than discrete sources of radium-226, is not currently regulated by the NRC. and Accelerator Produced Radioactive Material (~~NARM~~) is not regulated by the NRC unless the material was produced for use in a commercial, medical or research activity. Questions regarding the use of NORM or ARM not regulated by the NRC should be directed to the appropriate Agreement State or non-Agreement State Radiation Control Program Office contacts located at FSME's the Web Site in paragraph C.

# **Attachment 1**

## **RECOMMENDED PROCEDURE FOR LICENSEES TO OBTAIN JURISDICTION DETERMINATIONS**

If you intend to conduct licensed activities at a Federally-controlled site (e.g., a Federally-controlled site in an Agreement State), the jurisdictional status of the site should be determined. If you are uncertain regarding the jurisdictional status of a proposed job site, it is recommended that you take the following steps:

- A . Obtain specific information regarding the location of the proposed job site (e.g., street address, Range/Township, building or hangar number, distance from a specific intersection, or other identifying details) and identity of the Federal Agency controlling the proposed job site.
- B. Call the Federal Agency's local contact (contract officer, base environmental health officer, district office staff, regional office staff, etc.) and request information regarding the jurisdictional status of the proposed job site. We recommend that you request such a statement in writing. Otherwise, you should document, in your records, the name and title of the person at the Federal Agency who provided the determination and the date that it was provided.
  - 1. If the job site is identified as falling under "Exclusive Federal Jurisdiction" and you are an Agreement State licensee, your notification of proposed work (NRC Form 241) and, if available, a copy of the statement of jurisdiction from the agency should be submitted to NRC. In lieu of submitting an NRC Form 241, Agreement State licensees may apply for a specific NRC license to operate in areas under NRC jurisdiction. If you are an NRC licensee, no action is required.
  - 2. If the job site is identified as other than "Exclusive Federal Jurisdiction" you should contact the Agreement State within which the facility exists.

If you are an American Indian owned company or a non-American Indian owned company proposing to work on American Indian owned (Treaty) lands, you should contact the appropriate NRC Regional office as directed in NUREG-1556, Volume 19: "Guidance For Agreement State Licensees about NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Off-Shore Waters" and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity) (Final Report) Published: November 2000."

An Agreement State licensee found to be involved in an area of exclusive Federal jurisdiction without a prior NRC license or without prior filing for reciprocity in accordance with 10 CFR 150.20 is potentially subject to escalated enforcement action, including civil penalties and

orders. However, NRC will not take enforcement action against an Agreement State licensee for such

-2-

violations if the licensee has evidence that it received a determination from the Federal Agency that the area of work is not subject to exclusive Federal jurisdiction. This evidence may be a written statement from the Federal Agency that provided the determination and the date that it was provided or a written statement signed and dated by the licensee documenting the name and title of the person at the Federal Agency who provided the determination that the job site was not in an area of "Exclusive Federal Jurisdiction" and the date the determination was provided.