



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

(FSME-12-086, October, Program, SA-112; SA-115)

October 31, 2012

ALL AGREEMENT STATES

OPPORTUNITY TO COMMENT ON DRAFT REVISIONS TO THE OFFICE OF FEDERAL AND STATE MATERIALS AND ENVIRONMENTAL MANAGEMENT PROCEDURES SA-112, "EMERGENCY SUSPENSION OF A SECTION 274B. AGREEMENT" AND SA-115, "TERMINATION OF A SECTION 274B. AGREEMENT" (FSME-12-086)

Purpose: To provide the Agreement States with the opportunity to comment on the proposed revisions to the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedures SA-112, "Emergency Suspension of a Section 274b. Agreement" and SA-115, "Termination of a Section 274b. Agreement."

Background: Proposed revisions of FSME Procedures SA-112 and SA-115 with tracked changes.

Discussion: Enclosed for your review and comment are the draft revisions to the FSME SA-112 and SA-115. FSME SA-112 describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to temporarily suspend a State's 274b. Agreement with the NRC when an emergency situation exists requiring immediate action to protect public health and safety, and the State is not able or has failed to take steps to contain or eliminate the cause of danger within a reasonable time. SA-115 provides guidance on the process the NRC would follow in terminating a State's 274b Agreement. We would appreciate receiving your **comments* within 30 days from the date of this letter.**

* This information request has been approved by OMB 3150-0029 expiration 11/30/2013. 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, 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.

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

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/RA/

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Division of Materials Safety and State Agreements
Office of Federal and State Materials
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Enclosures:

1. FSME SA-112 Proposed Revised Procedure
with tracked changes
2. FSME SA-1 15 Proposed Revised Procedure
with tracked changes



**Office of Federal and State Materials and Environmental
Management Programs (FSME) Procedure Approval**

Emergency Suspension of a Section 274b. Agreement
SA-112

Issue Date:

Review Date:

| **Brian McDermott**
Director, MSSA

Date:

A. Duncan White
Branch Chief, MSSA

Date:

Michelle Beardsley
Procedure Contact, MSSA

Date:

ML

NOTE

***Any changes to the procedure will be the responsibility of the FSME Procedure Contact.
Copies of the FSME procedures are available through the NRC website.***



Procedure Title:
***Emergency Suspension of a
Section 274b. Agreement***
Procedure Number: SA-112

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Issue Date:
3/4/2014

I. INTRODUCTION

This procedure describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to temporarily suspend a State's 274b. Agreement (Agreement) with the NRC when an emergency situation exists requiring immediate action to protect public health and safety, and the State is not able or 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 NRC decisions to exercise the authority contained in Section 274j.(2) of the Atomic Energy Act, as amended (Act) [to temporarily suspend all or part of a State 274b. Agreement.](#)

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 Environmental Management Programs (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 [to the extent necessary to contain or eliminate the danger.](#) Unless acting pursuant to the Governor's request, the NRC will notify the Governor of the State [\(See Appendix A\)](#) prior to issuing the [Order temporarily y-suspending all or part of a State's Section 274b. Agreement.](#) ~~(Ssee Appendix A and B).~~ ~~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):
 - 1. [Signs the Order temporarily suspending all or part of a State's Section 274b. Agreement,](#)

2. Informs the Commission when, based on NRC staff recommendations, an immediately effective Order is issued temporarily suspending all or part of the State Section 274b. Agreement; and
3. Submits a memorandum to the Commission detailing the nature of the emergency situation and the actions taken to contain or eliminate the danger (Ssee Appendix DC).
 - a. ~~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. FSME:

1. The Office Director signs the Order notifying State licensees of the temporary transfer of regulatory authority to the NRC (See Appendix ~~CD~~).
2. ~~is responsible for taking the~~ Lead for in the preparation and coordination of a Commission memorandum detailing the emergency suspension of the Agreement in question.
- 4.3. The Division of Materials Safety and State Agreements (MSSA), FSME, ~~also~~ coordinates all follow-up emergency suspension notifications, (e.g., to the Governor, and All Agreement and Non-Agreement States).

C. ~~C.~~—The Office of Public Affairs (OPA):

- ~~is responsible for issuing~~ a press release (~~S~~see Appendix ~~ED~~).

D. ~~D.~~—The Office of Congressional Affairs (OCA):

- ~~is responsible for notifying~~ Congressional committees (~~S~~see Appendix ~~FE~~).

E. ~~E.~~—The Office of General Counsel (OGC):

1. Consults with the Director, ~~of~~ FSME concerning the legality of proposed action.
2. Reviews and comments for legality and concurrence, as appropriate, on the proposed Orders, the final Commission paper and other related documents.

F. The appropriate NRC Region:

1. ~~Coordinates—Coordinates~~ ~~is responsible for coordinating~~ with the State to gather ~~so that all~~ necessary information regarding the emergency situation and Agreement State licensees which may include transfer of licenses, license files and other appropriate material. ~~is gathered and action is taken to notify all licensees from the Agreement State radiation control program~~ (~~S~~see Appendices ~~GF and KJ~~).
2. Designates personnel to handle any reported events and inspections, as necessary, during the temporary suspension.

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 ~~unnot~~able, or has not taken effective steps, to eliminate the cause of the danger **within a reasonable time after the situation arose**.
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;
- 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;
- d. Conditions that caused or could cause an individual to receive a dose significantly in excess of the limits set forth in Table 2 to Appendix B of 10 CFR Part 20 resulting from radioactive contamination to the environment (air, water, effluents); or
- e. A pandemic or any other event (natural or man-made) that would prevent or disrupt an Agreement State from being able to respond to a significant event or to execute its Continuity of Operations (COOP) or Pandemic Response Plan.
 - i. In the event an Agreement State would need to execute its COOP and/or Pandemic Response Plan, it is anticipated that the NRC will need to be able to answer certain questions regarding any regulatory, safety or security issues as the result of the COOP/Pandemic situation. (See Appendix ~~K~~-H for a listing of these questions).
 - ii. Establishing and maintaining an Agreement State COOP and/or Pandemic Response plan is not a requirement under 274b. Agreements; however, NRC would still need to be informed of this occurrence and the State's actions in order to respond to other Federal/State agencies or Congressional inquiries.

B. Initiation of Emergency Suspension Action

1. If the Governor of a State requests that the NRC temporarily suspend part of its Agreement, MSSA should advise the State to make the request by a telephone call to the EDO, in coordination with the Director, 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.

2. ~~2.~~—If NRC initiates the emergency suspension, NRC evaluates the situation to determine if an emergency exists that:~~1)~~ has the potential to endanger public health and safety;~~2)~~ requires immediate action; and~~3)~~ the States has failed, or is unable, to address the situation in a reasonable time.
 - a. The NRC notifies (e.g., by telephone, email, or letter) the State Governor of the NRC’s determination that:
 - i. ~~1)~~~~a~~An emergency situation exists with respect to any material covered in the State’s Section 274b. Agreement that creates a danger requiring immediate action to protect the **health** or safety of persons either within or outside the State; and
 - ii. ~~2)~~~~†~~The States has not taken steps, or has informed the NRC that it will not or cannot take the steps necessary, to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

- b. The notification should also explain:
 - i. The NRC will temporarily suspend (all or part) of the State's Section 274b. Agreement via an Order for the duration of the emergency, and will exercise this authority only to the extent necessary to contain or eliminate the danger;⁷
 - ii. The actions the State must take, if possible, to address the emergency situation before the NRC will reinstate its Section 274b. Agreement;
 - iii. How NRC plans to handle license fees;¹² and
 - iv. How NRC plans to handle violations during this period.

—The NRC issues an Order temporarily suspending all, or part, of the Section 274b. Agreement with the State and reasserts regulatory authority over certain radiological materials and activities covered by the Agreement.

- 3. The Order should explain how the State can inform the NRC of a change in circumstances that might justify lifting of the suspension.
- 4. The NRC issues an Order to State licensees notifying them of the emergency suspension of all, or part, of the Section 274b. Agreement and of the NRC reassertion of regulatory authority over the specified radiological materials and activities.
 - a. The Order should also explain:
 - i. The NRC recognizes the State licenses. State licensees must comply with State law and their license conditions, and must submit notifications to the State and the NRC during the temporary suspension.
 - ii. How fees will be handled, including whether pending fees should be paid to the State or the NRC during the period the licensees are under NRC jurisdiction.

¹ The NRC staff should evaluate whether State licensees should pay State or NRC fees during the temporary suspension, in consideration of the case-by-case factors and in coordination with the Office of Chief Financial Officer (OCFO) and OGC.

- iii. How licensees will be informed of the lifting of the Order and return of regulatory authority to the State.

5. 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. Needed Information

13. To implement an emergency suspension in an efficient and effective manner, the NRC will ~~would~~ need to collect the following information, ~~at a minimum~~:

- a. A list of licensees, ~~licensees' addresses~~ and locations of use;
- b. A telephone or e-mail list of licensees in order to notify them of emergency suspension; and,
- c. The status of any amendments or new applications with immediate health and safety consequences.

24. If this information cannot be obtained prior to or shortly after an emergency suspension, NRC will use the National Source Tracking System (NSTS) to identify and locate the licensees with risk-significant quantities of radioactive material. In the future, the Integrated Source Management Portfolio (ISMP) will replace the need to collect the above listed information from the State.

~~5. Emergency suspension should only be used for a short term. If the emergency suspension will continue for an indefinite period, NRC will initiate steps for a full suspension or termination of the 274b. Agreement (see FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*, and FSME Procedure SA-115, *Termination of a Section 274b. Agreement*).~~

CD. 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, in writing, that the emergency suspension is no longer in effect (see Appendix ~~HIG~~).
- 2. OPA is responsible for issuing a press release (see Appendix ~~IJH~~).
- 3. OCA is responsible for notifying Congressional committees (see Appendix

JK†).

4. The appropriate NRC Region will notify ~~the~~-affected licensees or groups of licensees in the State that the emergency suspension is no longer in effect (see Appendix LKJ).
5. FSME will inform the State of continuing actions which the State must carry out in order to prevent another emergency.

E. ~~D.~~—Impact of the Emergency Suspension

1. ~~5~~—Emergency suspension should only be used for a short term. If the emergency suspension will continue for an indefinite period, NRC will initiate steps for a full suspension or termination of the 274b. Agreement (See FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*, and FSME Procedure SA-115, *Termination of a Section 274b. Agreement*).
2. Depending on a State's ability to address the 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 FSME Procedure SA-122, *Heightened Oversight and Monitoring*).
- 4-3. NRC will initiate enforcement actions in response to violations of the NRC Order issued to State licensees during the emergency suspension to the extent necessary to address immediate health and safety concerns arising out of the emergency situation. If the NRC becomes aware of other violations by State licensees during the temporary suspension, NRC will collect and compile such information to transfer to the Agreement State upon termination of the emergency suspension.

~~2.~~—

~~Depending on a State's ability to address the 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 FSME Procedure SA-122, *Heightened Oversight and Monitoring*).~~

VI. APPENDICES

- Appendix A - Sample Notification to the Governor of [State] of Emergency Suspension
- Appendix B - Sample Order Temporarily Suspending 274b. Agreement
- Appendix C - Sample Memorandum to the Commission Regarding the Emergency Suspension of All or Part of an Agreement
- Appendix D- Sample Order Notifying State Licensees of Temporary Suspension**
- Appendix ~~ED~~ - Sample Press Release
- Appendix ~~FE~~ - Sample Congressional Letter on Emergency Suspension
- Appendix ~~GF~~ - Sample Letter to Affected Agreement State Licensees regarding the Emergency Suspension

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**Appendix H Questions to be asked in the Event of Continuity of Operations or
Pandemic Plan Execution**

Appendix **HIG** - Sample Notification of Lifting Suspension

Appendix **IJH** - Sample Press Release on Lifting Temporary Suspension

Appendix **IJK** - Sample Congressional Letter on Lifting Temporary Suspension

Appendix **KLJ** - Sample Letter to Affected Agreement State Licensees on Lifting
Temporary Suspension

~~Appendix LK—Questions to be asked in the event of Continuity of Operations or
Pandemic Plan Execution~~

VII. REFERENCES

1. FSME Procedure SA-106, *The Management Review Board (MRB)*
2. FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*
3. FSME Procedure SA-115, *Termination of a Section 274b. Agreement*
4. FSME Procedure SA-122, *Heightened Oversight and Monitoring*

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VIII. ADAMS REFERENCE DOCUMENTS

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

No.	Date	Document Title/Description	Accession Number
1	7/18/02	STP Procedure SA-112	ML023020536
2	2/22/07	FSME-07-020, Opportunity to Comment on Draft Revisions to FSME Procedure SA-112	ML070570341
3	2/22/07	FSME Procedure SA-112, Draft Revision	ML070570359
4	9/25/07	FSME-07-089, Final FSME Procedure SA-112	ML072700496
5	9/25/07	FSME Procedure SA-112	ML072510003
6	9/25/07	Redline/Strikeout Copy	ML072510004
7	9/25/07	Resolution of Comments	ML072610485
8	11/08/10	FSME-10-093, Opportunity to Comment on Draft Revisions to FSME Procedures SA-112 and SA-114	ML103070271

Field Cod

Appendix A

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 U.S. Nuclear Regulatory Commission (NRC) 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. NRC 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 [temporarily](#) suspend all or part of the State's Agreement.]

When the emergency situation is contained or eliminated, NRC 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,

Chairman

Appendix B

Sample Order Temporarily Suspending a Section 274b. Agreement

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
[Insert name of State] SECTION 274B.) EA-YY-XXXX
AGREEMENT)
)

ORDER TEMPORARILY SUSPENDING THE SECTION 274b. AGREEMENT
WITH [Insert name of State] AND REASSERTING U.S. NUCLEAR
REGULATORY COMMISSION REGULATORY AUTHORITY
(EFFECTIVE IMMEDIATELY)

I

[This section should set forth the name of the Agreement State and background information regarding when the program was initiated, what type of materials are covered in the Section 274b. Agreement and the authority of the Commission and the Governor of the State to enter into this type of agreement. In addition, this section should state the authority of the Commission to temporarily suspend the State's Section 274b. Agreement, effective immediately. The following example is provided as sample text for this section.]

Pursuant to § 274j.(2) of the Atomic Energy Act of 1954, as amended (AEA or the Act), 42 U.S.C. § 2021(j)(2), the U.S. Nuclear Regulatory Commission (NRC) temporarily suspends [all or part] of the Section 274b. Agreement that authorized [insert name of State] to regulate [list the radiological materials and activities covered under the State's Section 274b. Agreement] and reasserts regulatory authority over the specified radiological materials [activities or individual license] (as listed in Section A of this Order). The NRC finds that an emergency situation exists with respect to these specified materials [activities or individual license] creating a danger that requires immediate action to protect the health or safety of persons within or outside the State. The NRC also finds that the State failed [or was unable] to take steps necessary to contain or eliminate the cause of the danger [within a reasonable time] after the situation arose, and this created an emergency situation that requires the NRC to temporarily suspend [all or part] of the State's Agreement in order to protect public health and safety.

[Insert name of State] is an Agreement State. Pursuant to Section 274 of the AEA, 42 U.S.C. § 2021, on [Date], the State of [insert name of State] assumed, and the NRC [or Atomic Energy Commission (AEC)] relinquished, authority for the licensing and regulation of specified

radiological material [and activities] upon finding the State program adequate to protect public health and safety and compatible with the NRC's program to regulate such radiological material [and activities]. [List all of the materials and activities covered under the Agreement. If appropriate, list radiological materials and activities over which the NRC relinquished regulatory authority in subsequent amendments to the State's Agreement and specify the dates of the amendments.] The Agreement authorized the State of [insert name of State] to regulate these radiological materials [and activities] for the protection of public health and safety.

II

[This section should describe the relevant events, facts, violations, technical, or legal reasons that provide the substantive basis for issuing the Order.]

[The following example is sample text for a funding/staffing emergency situation.]

By [letter, email, or telephone call] dated [insert date], [the party that contacted the NRC] advised [the NRC party who was contacted] that the State would not be able to [fund and/or staff] the program for regulating radiological materials subject to the Agreement at a level consistent with the State's program, which the NRC previously found to be adequate to protect the public health and safety and compatible with the NRC's regulatory program. On [insert date], the NRC notified Governor [insert name] that the [funding and/or staffing] is inadequate and creates a danger that requires immediate action to protect the health or safety of persons within or outside the State. [Provide any appropriate additional information regarding the emergency situation.] [For instance, this paragraph could state the following. The State's proposal to have only [1 or 2] staff members implement [insert name of State's radiation control program] is inadequate to protect public health and safety. [Insert name of State] has approximately [insert number of relevant licensees]. The staffing level does not ensure adequate coverage for emergency calls if a staff member is out of the office. The proposed staffing level creates a danger that could directly result in exposure to an individual in excess of the basic radiation protection standards in 10 C.F.R. Part 20.]

The NRC has determined that an emergency situation exists in the State of [insert name of State] because of the State's failure [or inability] to take steps necessary to contain or eliminate the cause of the danger within a reasonable time. [Provide any additional information supporting the NRC's finding.] Therefore, the NRC finds that it is necessary to temporarily suspend [all or part] of the State's Section 274b. Agreement. On [insert date], the NRC notified the Governor of [State] of its intention to issue this temporary suspension Order.

[The following example is sample text for a natural or man-made disaster.]

On [insert date], a [insert type of disaster] occurred in [insert name of State]. The State declared that an emergency situation exists. On [insert date], the NRC notified Governor [insert name] that the emergency situation creates a danger that requires immediate action to protect the health or safety of persons within or outside the State. [Provide any appropriate additional information regarding the emergency situation.]

The NRC has determined that an emergency situation exists in the State of [insert name of State] because of the State's failure [or inability] to take steps necessary to contain or eliminate the cause of the danger within a reasonable time. [Provide any additional information supporting the NRC's finding.] [For instance, this paragraph could state the following. Currently, [insert name of State] cannot ensure protection of public health and safety. [Insert name of State] has approximately [insert number of relevant licensees]. Due to the nature of the emergency, [insert name of State] is unable to confirm the location and security of regulated radiological materials within the State, which creates a danger that could directly result in exposure to an individual in excess of the basic radiation protection standards in 10 C.F.R. Part 20. Therefore, the NRC finds that it is necessary to temporarily suspend [all or part] of the Agreement in order for the NRC to have regulatory authority to enter the State and confirm the location and security of the licensed material. The NRC has notified the Governor of [insert name of State] of its intention to issue this temporary 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 sample text for this section.]

Section 274j.(2) of the Act authorizes the NRC, 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 NRC, an emergency situation exists with respect to any material covered by the Agreement creating a danger that requires immediate action to protect the health and safety of persons within or outside of the State, and the State has failed [or is unable] to take steps necessary to contain or eliminate the danger within a reasonable time after the situation arose. A temporary suspension of the Agreement under Section 274j.(2) of the Act remains in effect only while the emergency situation exists. During the temporary suspension, the NRC 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 [insert name of 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 NRC, created an emergency situation with respect to materials covered by the State's Section 274b. Agreement. Immediate action is necessary to protect public health and safety. The State of [insert name of State] has failed [or is unable] to take the steps necessary to contain or eliminate the cause of the danger to public health and safety. Therefore, protecting public health and safety requires that the Agreement [or portions identified] [or individual license] between the NRC and [insert name of State] be temporarily suspended and that the NRC reassert regulatory authority over [list specific radiological materials, activities or individual license that the NRC will regulate during the temporary suspension.] Furthermore, pursuant to Section 274j.(2) of the Act, the NRC finds that the public's health, safety, and interest require that this Order be immediately effective.

In order to allow a smooth transition, the NRC deems it essential to maintain continuity in the licensing and regulatory obligations of the [insert name of State] licensees whose licenses are being recognized by the NRC. Such continuity would be assured by keeping in effect on an interim basis all [insert name of State] licenses as currently issued, until such time as the State's Section 274b. Agreement is reinstated.

The NRC will issue an Order notifying [insert name of State] licensees that their licenses are being recognized by the NRC as currently issued. The Order will provide notice to the licensees that they are subject to 10 C.F.R. Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended," and 10 C.F.R. Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC." The Order will notify the licensee that they will be contacted by the NRC individually with respect to any NRC fees applicable to their activities. The licensees will also be ordered to comply with the following requirements:

1. The licensee shall comply with [insert name of State] law and conditions in their current license.
2. The licensee shall make all notifications, required under [insert name of State] law or by the conditions in its current license, to the State of [insert name of State] and to NRC Region [insert Region number]'s State Agreements Officer at [insert telephone number for the State Agreements Officer], until further notice.

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 NRC AND [insert name of State], DATED [insert date], IS TEMPORARILY SUSPENDED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

- A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL OR INDIVIDUAL LICENSE AFFECTED];

The NRC HEREBY ORDERS that all [or part] of the Section 274b. Agreement with [insert name of State] is temporarily suspended, and reasserts regulatory authority over the following radioactive materials [and activities or individual license]:

[The following is a list of radioactive materials and activities that may be covered in a Section 274b. Agreement. This section should include only those materials and activities over which the NRC is reasserting its regulatory authority through this temporary suspension.]

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(2) of the Act;
3. Byproduct material as defined in Section 11e.(3) and 11e.(4) of the Act;
4. Source material (uranium and thorium) as defined under Section 11z. of the Act;
5. Special nuclear material as defined under Section 11aa. of the Act in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;
7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in NRC regulations or Orders.

B. [IDENTIFY WHAT ACTIONS (AND WHEN) THE STATE MUST DO TO ELIMINATE THE DANGER THAT WAS THE BASIS FOR THE TEMPORARY SUSPENSION];

[The following example is a sample paragraph for this section.]

The NRC HEREBY ORDERS that [insert name of State] must increase [funding/staffing] levels to [insert number] within 30 days, to ensure adequate protection of public health and safety. Failure to provide adequate [funding/staffing] within this time period will result in the NRC evaluating whether to permanently suspend or terminate the State's Section 274b. Agreement in order to protect public health and safety.

C. [IDENTIFY WHAT MUST HAPPEN TO REINSTATE THE AGREEMENT]

[The following example is a sample paragraph for this section.]

The NRC HEREBY ORDERS that in order to reinstate its Section 274b. Agreement, [insert name of State] must notify the NRC, and provide adequate documentation, that it has increased [funding/staffing] levels to [insert number] to ensure adequate protection of public health and safety. After determining that the State actions are adequate to protect health and safety and compatible with the NRC's regulatory program, the NRC will send a letter to the State indicating that the NRC has reinstated the State's Agreement.

D. [STATE LICENSES]

The NRC HEREBY ORDERS that all licenses and license amendments issued by [insert name of State], outstanding orders (if any), or other documents establishing obligations for specific licensees that are recognized by the NRC shall remain in full force and effect as if issued by the NRC during the temporary suspension.

FOR THE NUCLEAR REGULATORY COMMISSION

Executive Director for Operations

Dated this ____ day of _____, _____

Appendix B

Sample Order Temporarily Suspending 274b Agreement

~~UNITED STATES NUCLEAR REGULATORY COMMISSION~~

In the Matter of

~~[Name of State]~~

~~[Agreement State Program]~~

~~ORDER TEMPORARILY SUSPENDING 274b AGREEMENT~~

~~(EFFECTIVE IMMEDIATELY)~~

~~[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 byproduct material as defined in Section 11e.(3) of the Act and/or byproduct material as defined in Section 11e.(4) of the Act 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.~~

~~||~~

~~[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.]~~

~~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.~~

~~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~~

~~Executive Director for Operations~~

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

Appendix C

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 enclosed Order was issued to [State] on [Date], temporarily suspending [State's Name] Agreement with the U.S. Nuclear Regulatory Commission ([NRC](#)) 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 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 ~~NRC Commission~~ to protect the health and safety of [description of the public impacted]. The staff has also determined that [State's Name] has failed, [or is unable](#), 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. ~~An Order letter~~ notifying the affected State licensees will be sent by the [Office of Federal and State Materials and Environmental Management Programs](#)~~Regional Office~~.

Enclosure:
Order to [State]
[Order to \[State\] licensees](#)

Appendix D

Sample Order Notifying Materials Licensees of Transfer of Regulatory Authority

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
[Insert name of State] RADIOACTIVE) EA-YY-XXXX
MATERIALS LICENSEES)
IDENTIFIED IN ATTACHMENT 2)

ORDER NOTIFYING [insert name of State] RADIOACTIVE MATERIALS LICENSEES
OF TRANSFER OF REGULATORY AUTHORITY
(EFFECTIVE IMMEDIATELY)

Pursuant to Section 274j.(2) of the Atomic Energy Act, as amended (AEA), 42 U.S.C. § 2021(j)(2), the U.S. Nuclear Regulatory Commission (NRC) has temporarily suspended its Agreement with the State of [insert name of State] that authorized the State to regulate [list the radiological materials and activities covered under the State's Section 274b. Agreement over which the NRC is reasserting its regulatory authority]. As a result, the NRC is reasserting its regulatory authority over these radiological materials [add "and activities" if applicable], effective immediately. During this temporary suspension, the NRC will recognize the licenses issued by the State of [insert name of State] for these radiological materials as currently issued. The licensees identified in Attachment 2 to this Order all hold licenses issued by [insert name of State] in accordance with the State's Section 274b. Agreement.

Inasmuch as NRC licensees are subject to 10 C.F.R. Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended," and 10 C.F.R. Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC," this Order notifies the licensee that the NRC will individually contact the licensee regarding the extent to which these fee requirements are applicable to the licensee.

Accordingly, pursuant to Sections 161b., 161c., 161i., 161o., and 274 of the AEA, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 2 TO THIS ORDER SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

1. The licensee shall comply with [insert name of State] law and the conditions in its current license.
2. The licensee shall make all notifications, required under [insert name of State] law or by the conditions in its current license, to the State of [insert name of State] and to NRC

Region [insert Region number]'s State Agreements Officer at [insert telephone number for the State Agreements Officer], until further notice.

FOR THE NUCLEAR REGULATORY COMMISSION

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

Dated this ____ day of _____, _____

Attachments:

1. Order EA-YY-XXXX dated _____ [Order issued by the NRC to State].
2. List of Applicable [insert name of State] Radioactive Materials Licensees

Appendix ED

Sample Press Release

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 [specified types of radioactive materials](#) (E.g. 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 [radioactive material](#) covered by such an Agreement creating danger which requires immediate action to protect [public the health and safety of persons](#). In order to take such action, the [NRC Commission](#) must also determine that the State has failed, [or is unable](#), 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 [NRC 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 [regulatory](#) authority.

Appendix F E

Sample Congressional Letter on Emergency Suspension

[Appropriate Congressional Oversight Committee]

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)].

Licenses 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 [regulatory](#) authority. We are also issuing a press release.

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:
Order to Temporarily Suspend
[Order to State Licensees](#)

Appendix G

F

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 [regulatory](#) 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,

Regional Administrator

Appendix H

Questions to be asked in the event of Continuity of Operations or Pandemic Plan Execution

The questions listed below are those that NRC anticipates asking of the Agreement States upon: (1) NRC notification to the Agreement States upon activation of NRC's Continuity of Operations (COOP)/Pandemic Response Plan, and (2) notification to NRC by an Agreement State upon activation of their State's COOP and/or Pandemic response plan:

1. Has the State Government or the Radiation Control Program activated its COOP or Pandemic Response Plan? If so, when? If not, will the State notify the NRC upon activation of its plan?
2. Who is the State COOP or Pandemic Response Plan point of contact for radiation protection issues? Please provide contact information and 24/7 number, if available.
3. Is the State currently able to conduct critical regulatory and radiation protection functions* with respect to radioactive material? (Has the State defined their critical functions?)
4. Does the State need or request NRC assistance at this time?
5. Is the State monitoring or has the State reached out Category 1 and 2 licensees to inquire and obtain assurances regarding the safety and security of licensed materials?
6. Are you currently aware of (or do you anticipate) any problems with continued local law enforcement agency (LLEA) response to support increased control of radioactive materials?
7. Are you currently aware of (or do you anticipate) any impacts to medical licensees' ability to perform procedures involving radioactive materials?
8. Are you currently aware of (or do you anticipate) any impact to the transportation and shipment of medical use radioactive materials?
9. Are you currently aware of (or do you anticipate) any other potential issues affecting health and safety or security of radioactive materials?

*NRC considers critical or essential functions as those functions that must be continued throughout, or resumed rapidly after, a disruption of normal activities, in order to maintain public health and safety. These are things such as incident assessment and response, reactive inspections for events, and emergency Orders or licensing actions that cannot be reduced or postponed. The NRC engaged in a process with the Federal government to define those functions according to federal standards [Federal Continuity Directive (FCD) 2, "Federal Executive Branch Mission Essential and Primary Mission Essential Function Identification and Submission Process," dated February 2008, issued by U.S. Department of Homeland Security (DHS)].

Appendix IG

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, **or is unable**, 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 **NRC 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 **NRC Commission** has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the **NRC 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 Environmental Management Programs, at [telephone number].

Sincerely,

Executive Director for Operations

Appendix JH

Sample Press Release on Lifting Temporary Suspension

U.S. NUCLEAR REGULATORY COMMISSION IS LIFTING THE TEMPORARY EMERGENCY
SUSPENSION OF THE [STATE'S NAME] REGULATORY AUTHORITY

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

On [Date] 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)]. Under Section 274 of the Atomic Energy Act of 1954, as amended, the 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, or is unable, 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 ~~NRC Commission~~ is authorized to exercise its authority only to the extent necessary to contain or eliminate the danger.

The ~~NRC Commission~~ has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the ~~NRC 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].

Appendix **KI**

Sample Congressional Letter on Lifting Temporary Suspension

[Appropriate Congressional Oversight Committees]

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

The ~~NRC Commission~~ has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the ~~NRC 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].

Sincerely,

Director
Office of Congressional Affairs

Appendix LJ

Sample Letter to Affected Agreement State Licensees on Lifting Temporary Suspension

To [STATE] Licensee:

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

The ~~NRC Commission~~ has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the ~~NRC Commission~~ and [State] has been reinstated and your [affected State] license will remain in effect as it was issued prior to the temporary suspension.

If you have any questions or concerns regarding this action please contact [Appropriate Regional Contact].

Sincerely,

Regional Administrator

~~Appendix K~~

~~Questions to be asked in the event of Continuity of Operations or Pandemic Plan Execution~~

~~The questions listed below are those that NRC anticipates asking of the Agreement States upon: (1) NRC notification to the Agreement States upon activation of NRC's Continuity of Operations (COOP)/Pandemic Response Plan, and (2) notification to NRC by an Agreement State upon activation of their State's COOP and/or Pandemic response plan:~~

- ~~1. Has the State Government or the Radiation Control Program activated its COOP or Pandemic Response Plan? If so, when? If not, will the State notify the NRC upon activation of its plan?~~
- ~~2. Who is the State COOP or Pandemic Response Plan point of contact for radiation protection issues? Please provide contact information and 24/7 number, if available.~~
- ~~3. Is the State currently able to conduct critical regulatory and radiation protection functions* with respect to radioactive material? (Has the State defined their critical functions?)~~
- ~~4. Does the State need or request NRC assistance at this time?~~
- ~~5. Is the State monitoring or has the State reached out Category 1 and 2 licensees to inquire and obtain assurances regarding the safety and security of licensed materials?~~
- ~~6. Are you currently aware of (or do you anticipate) any problems with continued local law enforcement agency (LLEA) response to support increased control of radioactive materials?~~
- ~~7. Are you currently aware of (or do you anticipate) any impacts to medical licensees' ability to perform procedures involving radioactive materials?~~
- ~~8. Are you currently aware of (or do you anticipate) any impact to the transportation and shipment of medical use radioactive materials?~~
- ~~9. Are you currently aware of (or do you anticipate) any other potential issues affecting health and safety or security of radioactive materials?~~

~~*NRC considers critical or essential functions as those functions that must be continued throughout, or resumed rapidly after, a disruption of normal activities, in order to maintain public health and safety. These are things such as incident assessment and response, reactive inspections for events, and emergency Orders or licensing actions that cannot be reduced or postponed. The NRC engaged in a process with the Federal government to define those functions according to federal standards [Federal Continuity Directive (FCD) 2, "Federal Executive Branch Mission Essential and Primary Mission Essential Function Identification and Submission Process," dated February 2008, issued by U.S. Department of Homeland Security (DHS)].~~



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FSME Procedure Approval

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

Issue Date:

Review Date:

Brian J. McDermott
Director, MSSA

Date:

A. Duncan White
Branch Chief, MSSA

Date:

Michelle R. Beardsley
Procedure Contact, MSSA

Date:

ML12

NOTE

Any changes to the procedure will be the responsibility of the FSME Procedure Contact. Copies of the FSME procedures are available through the NRC website.



Procedure Title:
Termination of a Section 274b.
Agreement
Procedure Number: SA-115

Page: 1 of
Issue Date:

I. INTRODUCTION

This procedure describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to terminate a ~~Agreement~~ State's 274b. ~~Agreement.~~ ~~program~~

II. OBJECTIVES

- A. To provide the guidelines ~~that will govern to be followed by the Nuclear Regulatory Commission (NRC's) decision when considering whether or not to terminate an agreement pursuant to exercise~~ the authority contained in Section 274j.(1) of the Atomic Energy Act (Act), as amended, ~~for terminating a State's 274 b. Agreement.~~
- 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, allows the Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of such State, 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 Environmental Management Programs (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 FSME Procedure SA-112 *Emergency Suspension of a Section ~~274b~~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.(1) 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 **Governor of the** State and provide the State an opportunity for a hearing on the proposed termination as discussed in Section V.D.1. However, if the State requests termination of the Agreement, the notice and opportunity for a hearing to the State is not necessary. 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) **is responsible for informing the Commission of its decision to initiate proceedings to terminate a State's Agreement, based on the NRC staff recommendations. The EDO signs the initial Commission Paper containing the staff's recommendation and basis-ed-on-the, i.e. whether the request was initiated by the State Governor or MRBthe NRC.'s recommendation that NRC initiate the proceedings to terminate an agreement.**
- C. FSME is responsible for taking the lead in the preparation and coordination of the **firstinitial** Commission Paper recommending the termination of the Agreement State program in question. FSME also coordinates all followup termination notifications, i.e., to the Governor, the *Federal Register*, the U.S. Department of Labor, Agreement **and non-Agreement** State licensees, and all States.-
- D. The Office of the General Counsel (OGC) is the lead for the preparation of the **final** 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 **releasissuing a press release public announcement ofannouncing** 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 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, the NRC may terminate all or part of its Agreement with a State and reassert its authority. The letter should be addressed to the Chairman of the NRC from the Governor.
2. The Commission will can 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's 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 the 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 if the State is in a situation where the NRC would consider initiating formal procedures to terminate an agreement. These meetings are normally open to the public and Agreement States' representatives will be invited to attend (SA-106, *The Management Review Board*). The 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. FSME

1. If it is the recommendation of the MRB and EDO that the NRC initiate the proceedings to terminate an agreement, FSME, in consultation with OGC, OCFO and the appropriate Region, is assigned the lead for the 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 the NRC reasserting authority. (See Appendix A for a sample Commission Paper, including a sample *Federal Register* Notice.)
2. If the Commission decides to terminate the Agreement, a second Commission paper will be prepared.
 - a. Appendix B contains a sample Commission Paper for a State that does not request a hearing.
 - b. Appendix C contains a sample Commission Paper when the State Governor requests the termination of the Agreement.
3. FSME will provide as the following supplemental information to the second Commission Paper:
 - a. ~~i. Public Announcement~~ Press Release in consultation with OPA (see Appendix D);
 - b. ~~ii. b) Letters to Congressional Committees~~ (see Appendix E);
 - c. 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 F).

~~d.~~ Letter to State Licensees (see Appendix G).

~~d.~~

~~e. v e.~~ All Agreement and Non-Agreement States Letter (see Appendix H).

~~2. The initial Commission paper will be coordinated with OGC, 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 or the State Governor requests termination, the Commission will proceed to make a final decision on the issue.
 - ~~a. OGC and FSME will be 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 or C for appropriate Commission Paper).~~
3. If the State does request a hearing, the Commission will initiate the hearing process described in Section E 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. ~~Affected~~ 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 the State is requesting termination of an ~~a~~Agreement or ~~the~~ NRC is pursuing termination of an ~~a~~Agreement with a State, State and NRC activities should be coordinated so that there is continued protection of the public health and safety. FSME will coordinate with the State and Region as to ~~the any necessary~~ technical assistance ~~necessary to ensure this to~~ continued ~~the~~ protection ~~of public health and safety~~.

G. Additional Coordination After Terminations

- 1. ~~The~~ 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 OGC and OCFO.
- 2. After the termination of the ~~a~~Agreement, FSME will issue letters to the U.S. Department of Labor and other Federal Agencies advising the various agencies of the effective date of the termination of the ~~a~~Agreement (see Appendix F).

3. The Regional State Agreements Officer (RSAO) should obtain from the State a ~~computer printout~~listing of all specific and general licenses under the State's aAgreement. ~~Mailing labels should be obtained, if possible, from the State.~~ A letter should be ~~prepared~~issued notifying each licensee of the termination, reassertion of the NRC's authority, and appropriate information (see Appendix G).
4. 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 H).
5. The Region will coordinate with the State so that all necessary action is taken to have ~~the all license files for the licenses~~ transferred to the NRC in an expeditious manner.

H. ~~Renewed~~Future Interest in Obtaining ~~274b~~274b. Agreement

A State that has had an aAgreement terminated by the NRC may, at a later date, express interest in ~~obtaining~~entering into a new aAgreement. The State should be treated as other ~~N~~non-Agreement States interested in aAgreements, and 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
 - Enclosure 1 - Management Review Board Recommendations
 - Enclosure 2 - Proposed *Federal Register* Notice Regarding Opportunity for Hearing on Reassertion
- Appendix B - Sample Commission Paper for Reassertion of NRC Authority in an Agreement State
 - Enclosure 1 - Order Terminating Agreement State Program
 - Enclosure 2 - *Federal Register* Notice Regarding Reassertion
 - Enclosure 3 - Letter to Governor Regarding the Commission Decision on Termination
- Appendix C - Sample Commission Paper for Reassertion of NRC Authority in an Agreement State upon the Request of a State Governor
 - Enclosure 1 - Order Terminating Agreement State Program
 - Enclosure 2 - *Federal Register* Notice Regarding Reassertion
 - Enclosure 3 - Letter to Governor Regarding the Commission Decision on Termination

- Appendix D - Sample **Press Release**~~public Announcement~~ to be Issued by the Office of Public Affairs
- Appendix E - Sample Letters to Congressional Committees
- Appendix F - Sample Letter to U.S. Department of Labor and other Federal Agencies on Termination
- Appendix G - Sample Letter to Licensees Regarding Termination and Reassertion
- Appendix H - Sample Letter to All States Regarding Termination and Reassertion

VII. REFERENCES

1. FSME Procedure SA-106, *The Management Review Board*
2. FSME Procedure SA-112, *Emergency Suspension of a Section ~~274b~~274b. Agreement*
3. FSME Procedure SA-113, *Placing an Agreement State on Probation*
4. FSME Procedure SA-114, *Suspension of a Section ~~274b~~274b. Agreement*
5. FSME Procedure SA-700, *Processing a New Agreement*
6. *Statement of Principles and Policy for the Agreement State Program*, dated September 3, 1997

VIII. ADAMS REFERENCE DOCUMENTS

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

No.	Date	Document Title/Description	Accession Number
1	05/15/2001	STP Procedure SA-115, Termination of a Section 274b 274b. Agreement	ML011370786
2	02/22/2007	FSME-07-020, Opportunity to Comment on Draft Revisions to FSME Procedure SA-115	ML070570341
3	9/25/2007	FSME-07-089, Final FSME Procedure SA-115	ML072700496
4	09/25/2007	FSME Procedure SA-115, Termination of a Section 274b. Agreement	ML072510008

Field Code Changed

Appendix A

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] 274 b. 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] aAgreement 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, if requested, for the termination of [State's] program.

DISCUSSION:

Section 274j of the Act authorizes the Commission to terminate the aAgreement 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.

[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 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.]

Appendix A (Continued)

Enclosure 1 includes the MRB recommendations. The proposed *Federal Register* Notice notifying the State of an opportunity for a hearing is shown in Enclosure 2.

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.

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. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Executive Director
for Operations

Enclosures:

1. MRB Recommendations
2. Proposed *Federal Register* Notice Notifying [State] of an Opportunity for a Hearing

Appendix A - Enclosure 1

SAMPLE Management Review Board Recommendations

MEMORANDUM TO: Executive Director for Operations

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

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

On [Date], the Management Review Board (MRB) met to consider the review of the [State] Agreement State program. Enclosed are the 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 ~~a~~Agreement between [State] and NRC, dated [Date].

Enclosure:
As stated

|

Appendix A - Enclosure 2

SAMPLE *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~~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:

[FSME CONTACT], Office of Federal and State Materials and Environmental Management 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 (Act) of 1954, 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.

[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~~Agreement State representative. The MRB makes its decisions regarding the adequacy of each Agreement State's program based on the staff's review of the program. In reviewing [State's] program, the MRB has recommended that the Commission

Appendix A - Enclosure 2 (Continued)

terminate the State's ~~agreement~~Agreement with NRC [Narrative of MRB findings and any hearings.]

Pursuant to the provisions of Section 274j of the Act , as amended, the staff has proposed that the Commission terminate the [State] agreement over [identify part of ~~agreement~~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~~Agreement. If a hearing is requested by the State, [provide details regarding the conduct of the 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~~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

SAMPLE -Commission Paper for Reassertion of NRC
Authority in an Agreement State

FOR: The Commissioners

FROM: General Counsel

SUBJECT: REASSERTION OF U.S. NUCLEAR REGULATORY COMMISSION (NRC)
REGULATORY AUTHORITY OVER [ALL OR PART OF] THE [STATE] 274 b.
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] 274 b.aAgreement.

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 termination in the *Federal Register*. The State has not requested a hearing on the matter. Accordingly, the staff recommends that the Commission terminate [State's] Agreement.

DISCUSSION:

Section 274j of the Act authorizes the Commission to terminate the ~~agreement~~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.]

Appendix B (Continued)

Enclosure 1 is a Commission Order which terminates the Agreement and reasserts NRC authority over the existing State licensees. The proposed *Federal Register* Notice shown in Enclosure 2 would provide notice that the Commission found termination of the Agreement to be necessary to protect the public health and safety and that reassertion of NRC authority would become effective on a specified date. A draft letter to [Governor] informing [him/her] of the Commission's decision is shown in Enclosure 3. NRC staff plans to send notifications to individual licensees and hold a public workshop with licensees in the State to ensure that NRC rules, fee schedules, and enforcement policies are understood. [Region] has tentatively scheduled this during the week of [Date]. NRC staff has been in communication with the State concerning transition arrangements including transfer of license files and other appropriate records to the [Region] Office.

[Coordinate with the Office of the Chief Financial Officer on including a discussion about the licensing and amendment fees as provided by 10 CFR 170 and annual fees as provided by 10 CFR Part 171 that State licensees will have to incur. Also, include a discussion on the timing of the fees.]

This action will terminate [State's] Section ~~274b~~274b.. Agreement with the NRC. Should the State at some future time wish to again become an Agreement State, it may do so by requesting a new Agreement in accordance with Section 274 of the Act and the NRC Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement" (46 FR 7540, January 23, 1981, as amended by Policy Statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).

COMMITMENTS:

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

1. A ~~press release~~ ~~public announcement~~ will be issued by the Office of Public Affairs.
2. The appropriate Congressional Committees will be informed of the Commission's decision by the Office of Congressional Affairs.
3. The appropriate Federal Agencies will be informed of the Commission's decision by the Office of Federal and State Materials and Environmental Management Programs (FSME).
4. A letter to [State] licensees will be issued by the [Region] Office.
5. An All Agreement and Non-Agreement States Letter will be issued by the Division of Materials Safety and State Agreements, FSME.

Appendix B (Continued)

RECOMMENDATION:

That the Commission:

1. Approve the Order provided in Enclosure 1 and direct the Secretary to issue such Order.
2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (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 termination (Enclosure 3).

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

The staff estimates that the incremental increase in technical staff effort to assume regulatory authority for the Program will be [FTE] in FY [year(s)]. This funding is included in the FY [year(s)] budget request(s). This [FTE] is needed to process the pending license requests, take other licensing actions necessary to conform the licenses to NRC requirements, and conduct the workshops. The magnitude of this effort is based on the preliminary assessment of the State's information and files based on exchanges of information with the State.

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

Enclosures:

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

|

Appendix B - Enclosure 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~~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 [identify part of ~~agreement~~Agreement affected and material affected]. The Agreement authorized the State of [State's 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 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

Appendix B - Enclosure 1 (Continued)

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~~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~~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 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].

Appendix B - Enclosure 1 (Continued)

IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Act of 1954, as amended, and Section 651(e) of the Energy Policy Act of 2005 (EPAAct), IT IS HEREBY ORDERED THAT THE 274 b.AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED _____, TERMINATE AS FOLLOWS:

Materials in the Agreement Affected

[Identify part of ~~agreement~~Agreement affected and material affected.]

In order to aid in a smooth transition, the Commission deems it essential to maintain continuity in the licensing and regulatory obligations of [State] licensees whose docketed are being transferred to the NRC. This continuity may be assured by keeping in effect on an interim basis all the State's licenses as currently issued, until such time as the licenses are modified to conform to NRC requirements.

V

Therefore, the Commission hereby orders the termination of the Agreement with [State] and reasserts its regulatory authority over these materials. Issued licenses, license amendments, outstanding orders (if any), or other documents establishing obligations for specific licensees that are transferred to the Commission, shall remain in full force and effect as if issued by the Commission. The NRC will review all transferred licensing documents and provide for their revision as necessary to meet NRC requirements.

FOR THE NUCLEAR REGULATORY COMMISSION

Secretariat

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

Appendix B - Enclosure 2

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~~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:

[FSME CONTACT], Office of Federal and State Materials and Environmental Management 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 (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.

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~~Agreement with NRC. The Commission has considered the State of [State's Name] radiation control program and has agreed with the findings of the MRB, as well as with its recommendation to terminate the program.

Appendix B - Enclosure 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~~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 and 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], FSME.

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

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

For the Nuclear Regulatory Commission.

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

Appendix B -Enclosure 3

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~~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~~Agreement discontinuing the NRC authority over [Identify part of ~~agreement~~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~~press release 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 support of the Agreement State Program since [Year] and the professionalism and courteous manner in which your staff have worked with the NRC. We look forward to continuing a productive relationship with your State on other regulatory matters under our jurisdiction.

Finally, we appreciate the State's cooperation in this matter to ensure a smooth transition of regulatory authority from the State to the NRC. [Director], Office of Federal and State Materials and Environmental Management Programs, at [phone number], can answer any questions that your staff may have.

Sincerely,

Chairman

Enclosure:
As stated

Appendix C

Sample Commission Paper for Reassertion of NRC Authority in an Agreement State upon the Request of a State Governor

FOR: The Commissioners

FROM: Executive Director for Operations

General Counsel

SUBJECT: REASSERTION OF U.S. NUCLEAR REGULATORY COMMISSION
REGULATORY AUTHORITY OVER [ALL OR PART OF] THE [STATE]
274 b. AGREEMENT

PURPOSE:

To recommend to the Commission the termination of [all or part] of the [State] 274b274b. Agreement.

SUMMARY:

By letter dated [Date], [Governor of State] advised the U.S. Nuclear Regulatory Commission (NRC) of [his/her] decision to return the State's Section 274b274b. Agreement to the NRC. [Explain why the Governor made this request (i.e., request made following the State's decision to cease funding the State's Agreement State program)]. In order to accept return of the Program, as requested by the Governor, and to effect reassertion of NRC authority, Section 274j of the Atomic Energy Act (the Act), as amended, requires a finding that it is necessary for the NRC to terminate the Agreement thereby relinquishing State authority over radioactive materials subject to the Agreement and reasserting NRC licensing and regulatory authority over these materials, in order to protect the public health and safety.

DISCUSSION:

[State] became an Agreement State on [Date]. [Explain the organizational structure of the Program and describe events or activities leading up to the request for termination of the Agreement by the Governor.]

The NRC staff is working with [pertinent organization or State contact] to ensure an effective and efficient transfer of the Program to the NRC. [Specifically include all communication between the NRC staff and the State (i.e., weekly calls evaluating the progress of activities and discussing issues that result from the transitioning of authority to the NRC).]

The reassertion process requested is provided by Section 274j(1) of the Act, as amended. This requires a Commission determination that termination of the Agreement and reassertion of NRC regulatory authority in [State] is necessary to protect the public health and safety. Since this action has been requested by the State, the notice and opportunity for a hearing to the State, that

Appendix C (Continued)

is provided for in Section 274j(1), is not necessary. Based upon [Governor] letter, it is recommended that the effective date for the reassertion of NRC authority be [Date]. Enclosure

1

is a Commission Order which terminates the Agreement and reasserts NRC authority over the existing State licensees. The proposed *Federal Register* Notice shown in Enclosure 2 would provide notice that the Commission found termination of the Agreement to be necessary to protect the public health and safety and that reassertion of NRC authority would become effective on a specified date. A draft letter to [Governor] informing [him/her] of the Commission's decision is shown in Enclosure 3. NRC staff plans to send notifications to individual licensees and hold a public workshop with licensees in the State to ensure that NRC rules, fee schedules, and enforcement policies are understood. [Region] has tentatively scheduled this during the week of [Date]. NRC staff has been in communication with the State concerning transition arrangements including transfer of license files and other appropriate records to the [Region] Office.

[Coordinate with the Office of the Chief Financial Officer on including a discussion about the licensing and amendment fees as provided by 10 CFR 170 and annual fees as provided by 10 CFR Part 171 that State licensees will have to incur. Also, include a discussion on the timing of the fees.]

This action will terminate [State's] Section [274b274b](#). Agreement with the NRC. Should the State at some future time wish to again become an Agreement State, it may do so by requesting a new Agreement in accordance with Section 274 of the Act and the NRC Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement" (46 FR 7540, January 23, 1981, as amended by Policy Statements published at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).

COMMITMENTS:

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

1. A ~~public announcement~~ [press release](#) will be issued by the Office of Public Affairs.
2. The appropriate Congressional Committees will be informed of the Commission's decision by the Office of Congressional Affairs.
3. The appropriate Federal Agencies will be informed of the Commission's decision by the Office of Federal and State Materials and Environmental Management Programs (FSME).
4. A letter to [State] licensees will be issued by the [Region] Office.
5. An All Agreement and Non-Agreement States Letter will be issued by the Division of Materials Safety and State Agreements, FSME.

Appendix C (Continued)

RECOMMENDATIONS:

That the Commission:

1. Approve the Order provided in Enclosure 1 and direct the Secretary to issue such Order.
2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (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 termination (Enclosure 3).

RESOURCES:

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

The staff estimates that the incremental increase in technical staff effort to assume regulatory authority for the Program will be [FTE] in FY [year(s)]. This funding is included in the FY [year(s)] budget request(s). This [FTE] is needed to process the pending license requests, take other licensing actions necessary to conform the licenses to NRC requirements, and conduct the workshops. The magnitude of this effort is based on the preliminary assessment of the State's information and files provided by the State based on exchanges of information with the State.

COORDINATION:

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the General Counsel has also reviewed this paper and has no legal objection.

Executive Director
for Operations

General Counsel

Enclosures:

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

Appendix C - Enclosure 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

On [Date], the [State] entered into an Agreement with the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Atomic Energy Act of 1954 (the Act), as amended, 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State with respect to [identify part of a Agreement affected and material affected]. The Agreement authorized [State] to regulate these materials for the protection of public health and safety.

II

By letter dated [Date], [Governor] of [State] advised the Commission of [his/her] decision to return the State's Section 274b Agreement to the NRC. [Include a discussion on why the request was made].

III

Section 274d of the Act, as amended, 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, as amended, and in all other respects is compatible with the Commission's program for the regulation of such materials.

Section 274j.(1) of the Act, as amended, authorizes the Commission to suspend or terminate its Agreement with any State, after reasonable notice and an opportunity for hearing to the State. This section also authorizes the Commission to reassert licensing and regulatory authority if the

Appendix C - Enclosure 1 (Continued)

Commission finds that such suspension or termination 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, as amended. NRC finds that notice and opportunity for a hearing to the State is not necessary when the State requests to return an Agreement.

In view of [State's] decision to return its Program to the NRC, the Commission finds it necessary to accept return of the Program and reassert its authority over the materials listed in Section IV of this Order. Consequently, we have determined that the termination is required to protect the public health and safety.

IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Act, as amended, and Section 651(e) of the Energy Policy Act of 2005 (EPAct), IT IS HEREBY ORDERED THAT THE 274 b. AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED [DATE], TERMINATE AS FOLLOWS:

Materials in the Agreement Affected

[Identify part of aAgreement affected and material affected.]

In order to aid in a smooth transition, the Commission deems it essential to maintain continuity in the licensing and regulatory obligations of [State] licensees whose dockets are being transferred to the NRC. This continuity may be assured by keeping in effect on an interim basis all the State's licenses as currently issued, until such time as the licenses are modified to conform to NRC requirements.

V

Therefore, the Commission hereby orders the termination of the Agreement with [State] and reasserts its regulatory authority over these materials. Issued licenses, license amendments, outstanding orders (if any), or other documents establishing obligations for specific licensees that are transferred to the Commission, shall remain in full force and effect as if issued by the Commission. The NRC will review all transferred licensing documents and provide for their revision as necessary to meet NRC requirements.

Appendix C - Enclosure 1 (Continued)

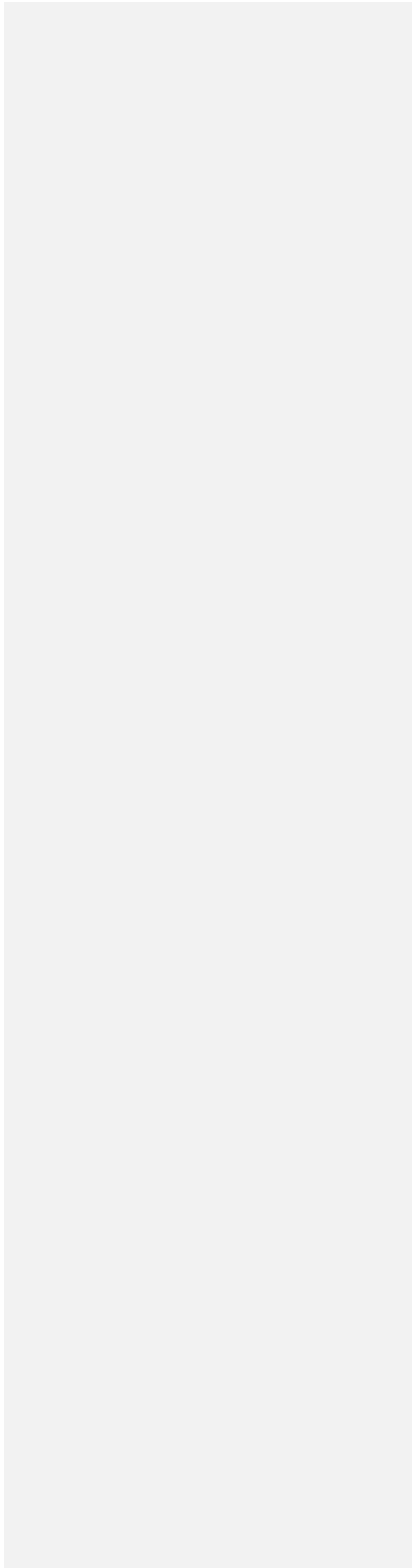
| [Time and Date of reassertion of NRC's regulatory authority]

FOR THE NUCLEAR REGULATORY COMMISSION

Secretary to the Commission

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

|



Appendix C - Enclosure 2

Sample *Federal Register* Notice Regarding Reassertion

NUCLEAR REGULATORY COMMISSION

Termination of [State] Regulatory Authority and the Reassertion of U.S. Nuclear Regulatory Commission Authority

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Termination of [State] Regulatory Authority, the Reassertion of the U.S. Nuclear Regulatory Commission (NRC) Authority.

SUMMARY: The NRC has terminated [State's] 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.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Under Section 274 of 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 quantities not sufficient to form a critical mass. 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 NRC's program for regulating those materials.

By letter dated [Date], [Governor] of [State] advised the Commission of [his/her] decision to return the State's Section 274b274b. Agreement to the NRC. [Include a discussion of why the request was made.]

Pursuant to the provisions of Section 274j. of the Act, 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 the 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].

Appendix C - Enclosure 2 (Continued)

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 **effective** under conditions set forth in the Order.

For information regarding this reassertion action, contact [Director], Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

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

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

For the Nuclear Regulatory Commission.

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

Appendix C - Enclosure 3

The Honorable [Governor]
Governor of [State]
[Address]

Dear [Governor]:

As a result of your letter of [Date], the U.S. Nuclear Regulatory Commission (NRC), on [Date], agreed to terminate the [State's] 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.

Enclosed is a copy of the *Federal Register* Notice which announces NRC reassertion. We will also issue a ~~public announcement~~ ~~press release~~ 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 support of the Agreement State Program since [Year] and the professionalism and courteous manner in which your ~~staff have~~ ~~staff has~~ worked with the NRC. We look forward to continuing a productive relationship with your State on other regulatory matters under our jurisdiction.

Finally, we appreciate the State's cooperation in this matter to ensure a smooth transition of regulatory authority from the State to the NRC. [Director], Office of Federal and State Materials and Environmental Management Programs, at [Phone Number], can answer any questions that your staff may have.

Sincerely,

[Chairman]

Enclosure: *Federal Register* Notice

Appendix D

SAMPLE Press Releaseublic 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] [OPTIONAL TEXT: at the request of the Governor].

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 of 1954, 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 [State Name] signed an aAgreement 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 aAgreement 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 aAgreement 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 E

SAMPLE Letter 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] **a**Agreement relinquishing the Nuclear Regulatory Commission (NRC) regulatory authority over [identify categories of material under the **a**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 **a**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 issued in conjunction with the publication of this notice.

Sincerely,

Director
Office of Congressional Affairs

Enclosure:
As stated

Appendix F

SAMPLE Letter to U.S. Department of Labor

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

Dear Mr. _____:

This is to advise the [AGENCY] that [OPTIONAL TEXT: at the request of the Governor of the [State] and] under Section 274 of the Atomic Energy Act, the Nuclear Regulatory Commission (NRC) terminated [State's] ~~a~~Agreement relinquishing the NRC regulatory authority over [identify categories of material under the ~~a~~Agreement].

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~~issued in conjunction with the issuance of this notice.

Sincerely,

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

Enclosure:
As stated

Appendix F (Continued)

Identical letters to:

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

Mr. _____, Chairman
Council on Environmental Quality
722 Jackson Place NW
Washington, DC 20503-0002

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, DC 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 G

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 a 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 the NRC. In the meantime, your [State] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet the 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

Enclosure:
As stated

Appendix H

SAMPLE FSME Letter to All States Regarding Termination and Reassertion

[DATE]

ALL AGREEMENT AND NON-AGREEMENT STATES

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

Purpose: To inform all States that effective on [date] the Nuclear Regulatory Commission (NRC) has issued an Order terminating [State's] regulatory authority over [identify part of Agreement affected and material affected] and reasserting NRC's authority in [State].

Background: Section 274j. of the Atomic Energy Act, as amended, allows the Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of such State, 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); and/or 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

Discussion: [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 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 Environmental Management Programs

Enclosure:
As stated