

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. Agreement.

SUMMARY:

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

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 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. 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 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.

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

# 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 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 affected and material affected]. The Agreement authorized the State of [STATE] 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

## 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 and the State's regulatory program complies with Section 274o of the Act and in all other respects is compatible with the Commission's program for the regulation of such materials.

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

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

Consequently, I 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].

## 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 (EPAct), 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 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]

## 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 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 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.

## 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 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



## 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 affected and material affected] and reasserting the Nuclear Regulatory Commission's (NRC's) authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.

[or]

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

Enclosed is a copy of the *Federal Register* Notice which announces NRC reassertion. We will also issue a 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