

**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] 274b. 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 274b. 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 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 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.

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 information and files provided by 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

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 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

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 (EPAAct), 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 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 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.

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]

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 274b. 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].

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 e 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

Enclosure 3

SAMPLE LETTER TO THE GOVERNOR

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 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 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