

SAMPLE (INITIAL) 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] Agreement and request that a special Agreement State Board be convened to provide [State] with an opportunity for a hearing if requested.

SUMMARY:

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

DISCUSSION:

Section 274j of the Act authorizes the Commission to terminate the Agreement with any State, after reasonable notice and an opportunity for hearing to the State, and to reassert the Commission's licensing and regulatory authority if the Commission 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.]

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

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

Enclosure:
As stated

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 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 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

Enclosure 2 (Continued)

terminate the State's 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 affected and material affected] and reassert NRC's authority in [State] in order to protect the public health and safety.

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