



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

Emergency Suspension of a Section 274b Agreement

SA-112

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NOTE

This procedure was formerly issued by the Office of State and Tribal Programs (STP). Any changes to the procedure will be the responsibility of the Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of this procedure will be available through NRC's website.



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

Page: 1 of 5

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I. INTRODUCTION

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

II. OBJECTIVE

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

Note: This procedure does not address the non-emergency situation in which there is no immediate danger to the public health and safety. Guidelines for non-emergency suspension are found in the Office of Federal and State Materials and 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. Unless acting pursuant to the Governor's request, the NRC will notify the Governor of the State prior to issuing the temporary suspension (see Appendix A). The authority may be exercised with respect to all or part of the State's Agreement.

IV. ROLES AND RESPONSIBILITIES

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

(see Appendix B) and for submitting a memorandum to the Commission detailing the nature of the emergency situation and the actions taken to contain or eliminate the danger (see Appendix C).

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

V. GUIDANCE

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

- b. Whether the State can satisfactorily resolve the emergency situation; and
 - c. Whether the State is implementing, or is committed to implement, program improvements to address the cause of the emergency situation.
 3. The following types of conditions, if not appropriately addressed by the State to prevent the danger, are examples that could result in a consideration of emergency suspension:
 - a. A condition or conditions that caused or could cause an individual or individuals to receive a dose significantly in excess of those basic dose limits set forth in Subpart C of 10 CFR Part 20;
 - b. Conditions that caused or could cause an individual to receive a dose significantly in excess of those basic dose limits set forth in Subpart D of 10 CFR Part 20; or
 - c. Conditions that caused, or could cause, individuals to receive a dose significantly in excess of those dose limits applicable to a certain class of licenses set forth in other parts of 10 CFR that Agreement States must adopt under the Commission Policy Statement for Adequacy and Compatibility, such as Part 35 limits for patient release.
 - d. A pandemic.
- B. Initiation of Emergency Suspension Action
 1. If the Governor of a State requests that the NRC temporarily suspend part of its Agreement, DMSSA should advise the State to make the request by 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 using the guidance in Section V. A above.
 2. For events which may warrant consideration of emergency suspension, but for which there is a reasonable basis for presumption that a State will satisfactorily resolve the emergency situation, the Region will inform the

State of necessary actions that the State should take and that an emergency suspension under Section 274j(2) will not be issued.

C. Withdrawal of Emergency Suspension

1. When the emergency situation is contained or eliminated, the EDO will lift the suspension by notifying the Governor of the State that the emergency suspension is no longer in effect (see Appendix G).
2. The Office of Public Affairs (OPA) is responsible for issuing a public announcement (see Appendix H).
3. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional committees (see Appendix I).
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 J).
5. FSME will inform the State of continuing actions which the State must carry out in order to prevent another emergency.

D. Impact of the Emergency Suspension

1. Depending on State's ability to address condition that precipitated the emergency suspension, the Management Review Board (MRB) will evaluate the Agreement State's continued ability to protect public health and safety. The MRB will consider whether it may be necessary to place the State on heightened oversight (see 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 Agreement State Program

Appendix C - Sample Memorandum to the Commission

Appendix D - Sample Public Announcement

Appendix E - Sample Congressional Letter

Appendix F - Sample Letter to Affected Agreement State Licensees

- Appendix G - Sample Notification of Lifting Suspension
- Appendix H - Sample Public Announcement on Lifting Temporary Suspension
- Appendix I - Sample Congressional Letter on Lifting Temporary Suspension
- Appendix J - Sample Letter to Affected Agreement State Licensees on Lifting Temporary Suspension

VII. REFERENCES

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

VIII. ADAMS REFERENCE DOCUMENTS

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

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

Appendix A

Sample Notification to the Governor of [State] of Emergency Suspension

Dear Governor [Name]:

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

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

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

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

Sincerely,

NRC Chairman

Appendix B

Sample Order Temporarily Suspending Agreement State Program

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]

[Agreement State Program]

ORDER TEMPORARILY SUSPENDING AGREEMENT STATE PROGRAM (EFFECTIVE IMMEDIATELY)

I

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

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

II

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

Appendix B (continued)

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

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

III

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

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

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

Appendix B (continued)

IV

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

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

FOR THE NUCLEAR REGULATORY COMMISSION

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

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

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

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

Enclosure:
As stated

Appendix D

Sample Public Announcement

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

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

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

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

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

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

Appendix E

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 authority. We are also issuing a public announcement.

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

Sincerely,

Director Office of Congressional Affairs

Enclosure:

As stated

Appendix F

Sample Letter to Affected Agreement State Licensees Regarding the Emergency Suspension

To [STATE] Licensees:

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

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

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

Sincerely,

Appropriate Regional Administrator

Appendix G

Sample Notification of Lifting Suspension

Dear Governor [Name]:

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

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

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

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

Sincerely,

Executive Director for Operations

Appendix H

Sample Public Announcement on Lifting Temporary Suspension

NRC 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 U.S. Nuclear Regulatory Commission (NRC) is authorized to temporarily suspend all or part of its Agreement with the State without notice or hearing if an emergency situation exists with respect to any material covered by such an Agreement creating danger which requires immediate action to protect the health and safety of persons, and the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension of the Agreement shall remain in effect for such time as the emergency situation exists. During the period of temporary suspension, the Commission is authorized to exercise its authority only to the extent necessary to contain or eliminate the danger.

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

Appendix I

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

Sincerely,

Director Office of Congressional Affairs

Appendix J

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 Commission has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the Commission and [State] has been reinstated 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,

Appropriate Regional Administrator