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

Suspension of a Section 274b Agreement - SA-114

Issue Date: , 2007

Review Date: , 2010

~~Paul H. Lohaus~~ Janet R. Schlueter Original signed by:
Director, ~~STP~~ DMSSA, FSME *~~Paul H. Lohaus~~ Janet R. Schlueter* Date: / /07

~~Frederick C. Combs~~ Scott W. Moore Original signed by:
Deputy Director, ~~STP~~ DMSSA, FSME~~Frederick C. Combs~~ Scott W. Moore Date: / /07

~~Kathleen N. Schneider~~ Osiris Siurano Original signed by:
Procedure Contact, ~~STP~~ FSME *~~Kathleen N. Schneider~~ Osiris Siurano* Date: / /07

NOTE

This procedure was formerly issued by the Office of State and Tribal Programs ~~The~~ (STP) ~~Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual~~. Any changes to the procedure will be the responsibility of the ~~STP~~ Federal and States Materials and Environmental Management Programs (FSME) Procedure Contact as of October 1, 2006. Copies of ~~STP~~ this procedures will be ~~distributed for information~~ available through NRC's website.

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I. INTRODUCTION

This procedure describes the process used by the Commission to suspend Agreement State programs.

II. OBJECTIVE

A. To provide the guidelines that will be followed by the Nuclear Regulatory Commission (NRC) staff when considering whether to exercise the authority contained in Section 274j(2) of the Atomic Energy Act (Act) to suspend an agreement with a State.

B. ~~Note:~~ This procedure does not address emergency suspension of an Agreement State program in situations where there is a danger to the public health and safety. Guidelines for emergency suspension are found in the Office of Federal and State Materials and Environmental Management ~~Tribal~~ Programs (~~STP~~ FSME) Procedure SA-112, *Emergency Suspension of a Section 274b Agreement.*

III. BACKGROUND

A. Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension 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 may suspend all or part of its agreement with the State (see also "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997).

B. The Commission can also suspend an agreement in circumstances where the State radiation control program has not complied with one or more requirements of the Act, i.e., the State program is not compatible with the NRC program and the State has refused or is unable to address those areas previously identified as compatibility concerns and the non-compatibility is disruptive to the national program conducted by NRC and Agreement States for the regulation of the Atomic Energy Act material.

C. Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension as discussed in Section V.C.1. below. Notice of the suspension will also be published in the *Federal Register*. Suspension, rather than termination, will be the preferred option in those cases where the Commission agrees that the State has provided evidence that the program deficiencies are temporary and that the State is committed to implementing program improvements.

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 suspend all or part of an Agreement State program.

B. The Executive Director for Operations (EDO) submits the Commission Paper containing the MRB's recommendation that NRC initiate the proceedings to suspend an agreement.

C. FSME ~~The Office of State and Tribal Programs (STP)~~ is responsible for taking the lead in the preparation and coordination of a Commission Paper recommending the suspension of the Agreement State program in question. ~~STP~~ FSME also coordinates all follow-up suspension notifications, i.e., to the Governor, the *Federal Register*, the U.S. Department of Labor (DOL), ~~Agreement State licensees~~, and All Agreement and Non-Agreement States.

D. The Office of the General Counsel (OGC) is responsible for taking the lead for preparing a Commission Paper containing the Commission's decision to suspend an Agreement State program.

E. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional Committees.

F. The Office of Public Affairs (OPA) is responsible for making a public announcement if the State does not request a hearing.

G. The Region is responsible for coordinating with the State so that all necessary action is taken to have license files transferred or made available to the NRC, and coordinates all follow-up suspension notifications to Agreement State licensees.

V. GUIDANCE

A. MRB

1. The MRB will meet to discuss the specific program review findings. These meetings are normally open and Agreement States' representatives from the State under review will be invited to attend (see SA-106, *The Management Review Board*).

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 suspend all or part of the Agreement State program in question.

B. ~~STP~~ FSME

1. If it is the recommendation of the MRB and EDO that NRC initiate the proceedings to suspend an agreement, ~~STP~~ FSME is assigned the lead for 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 suspension of the Agreement State program in question. The Commission Paper will also assess potential resource implications of NRC reasserting authority. (See Appendix A for a sample Commission Paper including a sample *Federal Register* Notice.)

2. If the Commission's decision is to support the MRB's recommendation for suspension, ~~STP~~ FSME will provide the following letters:

   a. A letter notifying the Governor of the suspension (see Appendix B, ~~Attachment~~ Enclosure 3).

   b. A letter advising the U. S. ~~Department of Labor (~~DOL~~)~~ of the effective date of the suspension of the agreement (see Appendix E).

   c. ~~A letter notifying each licensee of the suspension (see Appendix F).~~

   ~~d.~~ A letter notifying all ~~Agreement and Non-Agreement~~ States of the effective date of the suspension and enclosing a copy of the Order

or *Federal Register* Notice (see Appendix G).

3. The Commission Paper will be coordinated with OGC~~, the Office of Nuclear Material Safety and Safeguards (NMSS)~~ and the affected Region.

C. 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). Section 274j(1) does not require such a hearing if suspension is requested by the Governor.

2. If the State does not request a hearing, the Commission will make a final decision on the issue.

   a. OGC is the lead for preparation of a Commission Paper containing the suspension order and the *Federal Register* Notice announcing the Commission's decision (see Appendix B and its Attachments).

   b. OPA will provide a public announcement. This information is to be included as ~~background~~ supplemental information to the Commission Paper (see Appendix C).

   c. ~~STP~~ FSME will provide the letter~~s~~ notifying the Governor (see Appendix B, Attachment 3). FSME will notify the U.S. DOL ~~and Congressional Committees~~ of the suspension (see Appendix E). This letter is to be included as supplemental information to the Commission Paper.

   ~~c~~d. OCA will notify Congressional Committees. This letter is also to be included as ~~background~~ supplemental information to the Commission Paper (see Appendix D).

   ~~d. STP will provide letters notifying the Governor, the U.S. DOL and Congressional Committees of the suspension (see Appendix E).~~

   e. If the State does request a hearing, the Commission will initiate the hearing process described in Section V.D., Hearing, below.

f. Whether or not a hearing is requested, if the Commission decision is to not support the recommendation to suspend the State's program, the Governor will be notified of this result. Congressional Committees will be notified and a public announcement will be made by OCA and OPA, respectively.

D. Hearing

1. The hearing for the suspension 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 an 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 affected Agreement State, and interested third parties will have an opportunity to offer their views, answer questions, and submit written materials

   b. 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 suspension. 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.

E. Additional Coordination During the Suspension

1. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. The lead for the meeting should be the Region in consultation with the OGC, ~~NMSS~~ FSME, and the Office of the Chief Financial Officer.

2. After the suspension of the agreement, ~~STP~~ FSME will prepare a letter to the U.S. DOL advising the Department of the effective date of the suspension of the agreement (see Appendix E).

3. The appropriate Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses affected by the suspension of the State's agreement. Mailing labels should be obtained, if possible, from the State. A letter should be prepared notifying each licensee of the suspension and reassertion by NRC and appropriate information (see Appendix F).

4. ~~STP~~ FSME will prepare a letter to ~~A~~all ~~Agreement and Non-Agreement~~ States notifying them of the effective date of the suspension and enclosing a copy of the Order or *Federal Register* Notice (see Appendix G).

5. The appropriate NRC Region will coordinate with the State so that all necessary action is taken to have license files transferred or made available to the NRC, and coordinates all follow-up suspension notifications to Agreement State licensees.

F. Withdrawal of Suspension/Recommendation for Termination

1. When the situation requiring the suspension has been corrected or eliminated, the MRB will consider all factors and recommend to the Commission whether to lift the suspension.

2. If the situation is not resolved, termination will be considered per ~~STP~~ FSME Procedure SA-115, *Termination of a Section 274b Agreement.*

VI. APPENDICES ~~- Draft Samples~~

Appendix A - Commission Paper for Suspension of All or Part of an Agreement and Request for Hearings

~~Attachment~~ Enclosure 1 - Management Review Board Recommendations
~~Attachment~~ Enclosure 2 - Proposed *Federal Register* Notice Regarding Opportunity for Hearing on Suspension

Appendix B - Commission Paper for Suspension of All or Part of an Agreement

~~Attachment~~ Enclosure 1 - Order Suspending Agreement State Program
~~Attachment~~ Enclosure 2 - *Federal Register* Notice Regarding the Suspension and Reassertion of NRC Authority
~~Attachment~~ Enclosure 3 - Letter to Governor Regarding the Commission Decision on Suspension

Appendix C - Public Announcement to be Issued by the Office of Public Affairs (OPA)

Appendix D - Letters to Congressional Committees

Appendix E - Suspension Procedure, Letter to U.S. Department of Labor (DOL) on Suspension

Appendix F - Suspension Procedure, Letter to Licensees Regarding Suspension and Reassertion

Appendix G - Suspension Procedure, Letter to All States Regarding Suspension and Reassertion

VII. REFERENCES

1. ~~STP Procedure SA-114, *Suspension of Section 274b Agreement*, supercedes Office of State Programs Internal Procedure D.22.~~
~~2~~. ~~STP~~ FSME Procedure SA-106, *The Management Review Board.*
~~3~~2 . ~~STP~~ FSME Procedure SA-112, *Emergency Suspension of a Section 274b Agreement.*
~~4~~3. ~~STP~~ FSME Procedure SA-115, *Termination of a Section 274b Agreement.*
~~5~~4. "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997.

VII. ADAMS REFERENCE DOCUMENTS

The previous revision of SA-114 can be found in the Agencywide Documents Access and Management System as follows:

Date	Document Tittle/Description	ADAMS ML#
02/08/2001	STP Procedure SA-114, Suspension of a Section 274b Agreement	ML010820146

Appendix A

~~DRAFT~~ SAMPLE: Commission Paper for Suspension
of All or Part of an Agreement and Request for Hearings

FOR: The Commissioners

FROM: Executive Director for Operations

SUBJECT: STAFF'S RECOMMENDATIONS REGARDING SUSPENSION OF [STATE'S] AGREEMENT WITH THE COMMISSION

PURPOSE:

To present the results of the staff review of the [State] program, the Management Review Board's (MRB) recommendation for suspension 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. This paper does not address any new commitments.

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 the Atomic Energy Act (the Act)]. Accordingly, the staff is recommending that the Commission initiate hearing procedures for the suspension of [State's] program.

DISCUSSION:

Section 274j(1) of the Act authorizes the Commission to suspend 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 suspension is required to adequately protect public health and safety or because the State has not complied with one or more requirements of the Act. Commission suspension of a State's Agreement is a temporary measure. If the deficiencies in a State's program are remedied, the Commission may lift the suspension by informing the Governor of the State and affected licensees.

[This section should contain facts concerning the State's program, why suspension is desirable versus termination. 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 suspension. If a hearing 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)

RESOURCES:

[To be developed in coordination with the Office of the Chief Financial Officer (CFO)].

~~COORDINATION: This paper has been coordinated with the Office of the General Counsel (OGC), which has no legal objection.~~

RECOMMENDATION:

That the Commission:

1. Notify ~~the~~ [State] of an opportunity for a hearing on the proposed suspension through [Special Agreement State Board or Commission itself]. If requested, approve such a request.

COORDINATION:

This paper has been coordinated with the Office of the General Counsel (OGC), which has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

[NAME]
Executive Director for Operations

~~Attachments~~ Enclosures:
1. MRB Recommendations
2. Proposed *Federal Register* Notice Regarding Opportunity for Hearing or Suspension

Appendix A - ~~Attachment~~ Enclosure 1

~~DRAFT~~ SAMPLE~~:~~ Management Review Board Recommendations

MEMORANDUM TO: Executive Director for Operations

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

SUBJECT: MANAGEMENT REVIEW BOARD RECOMMENDATIONS FOR THE SUSPENSION OF THE [STATE] AGREEMENT PROGRAM

On [date], the Management Review Board (MRB) met to consider the review of the [State] Agreement State program [attached are meeting minutes]. [Give details on the program deficiencies and the State's plans to correct the problems.]

Given the desire of [State] to continue with their agreement, but in light of the need to protect public health and safety, the MRB recommends that you direct the staff to prepare a Commission Paper to initiate suspension of the agreement program in accordance with procedures.

Attachment:
As stated

Appendix A - ~~Attachment~~ Enclosure 2

~~DRAFT~~ SAMPLE: ~~Proposed~~ *Federal Register* Notice
Regarding Opportunity for Hearing on Suspension

Opportunity for Hearing on Suspension of [State] Regulatory Authority and the Reassertion of NRC Authority

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Opportunity for Hearing on Suspension of the [State] Regulatory Authority and the Reassertion of NRC Authority

SUMMARY: The NRC staff has proposed that the Commission suspend [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 suspension of the [State's] regulatory authority.

FOR FURTHER INFORMATION CONTACT:

[~~STP~~ FSME CONTACT], Office of Federal and State Materials and Environmental Management ~~Tribal~~ 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, as amended, (the 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.

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 has recommended that the Commission

suspend the State's agreement with NRC until improvements to assure adequate protection of public health and safety are incorporated into [State's] regulatory program. [Narrative of MRB findings.]

Pursuant to the provisions of Section 274j of the Act, the staff has proposed that the Commission suspend 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 action ensures that there will be adequate licensing and inspection of the Atomic Energy Act activities.

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 suspend the State's Agreement.

If a hearing is requested by the State, [provide details regarding conduct of hearing depending on whether the hearing will be conducted by the Special Agreement State Board or the Commission itself.]

Existing licensees in [State] will be advised of this potential change in regulatory authority if the Commission decides to initiate suspension proceedings.

For information regarding this reassertion action contact [Director], Office of Federal and State Materials and Environmental Management ~~Tribal~~ Programs (~~STP~~ FSME).

Appendix B
~~Suspension Procedure~~

~~DRAFT~~ SAMPLE~~:~~ Commission Paper for Suspension of All or Part of an Agreement

FOR: The Commissioners

FROM: General Counsel

SUBJECT: REQUEST FOR SUSPENSION OF [ALL OR PART OF] THE [STATE] AGREEMENT

PURPOSE:

To inform the Commission that [State] was offered an opportunity for a hearing and not having requested one to recommend suspension of [all or part] of the [State] agreement. This paper does not address any new commitments.

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 Section 274 of the Atomic Energy (the Act)]. On [date], NRC published a notice of opportunity for a hearing on the proposed suspension in the *Federal Register*. The State has not requested a hearing on the matter. Accordingly, the staff recommends that the Commission suspend [name of State's] Agreement.

DISCUSSION:

Section 274j(1) of the Act authorizes the Commission to suspend 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 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.

[Cite this section from previous SECY. This section should contain facts concerning the State's program, why suspension is desirable versus termination. Reviews, MRB Meetings, and discussions and correspondence with the State addressing the deficiencies should be documented.]

Appendix B (Continued)

[The staff should document that the State was offered an opportunity for a hearing but did not request one.]

RESOURCES:

[To be developed in coordination with the Office of the Chief Financial Officer (CFO)].

~~COORDINATION: This paper has been coordinated with the Office of State and Tribal Programs (STP).~~

RECOMMENDATION: That the Commission:

1. Approve the Order provided in ~~Attachment~~ Enclosure 1 and direct the Secretary to issue such Order.

2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (~~Attachment~~ 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 suspension (~~Attachment~~ Enclosure 3).

COORDINATION:

This paper has been coordinated with the Office of Federal and State Materials and Environmental Management Programs (FSME). The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

General Counsel

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

Appendix B - ~~Attachment~~ Enclosure 1

DRAFT

Order Suspending Agreement State Program

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]
[Agreement State Program]

ORDER SUSPENDING 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 suspend 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 (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 [byproduct material as defined in Section lle(l) of the Act (radioisotopes) and/or byproduct material as defined in Section lle(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 and/or 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]. 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, 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].

Appendix B - ~~Attachment~~ Enclosure 1 (Continued)

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and the Management Review Board (MRB) recommendations, the Commission has determined that [State's] regulatory program [fails to adequately protect public health and safety and/or is incompatible with the Commission's regulatory program]. The review and MRB recommendations ascertained that [State's] Agreement State program failed to adequately protect public 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 independent evaluation ascertained that [State's] Agreement State program is incompatible with the Commission's regulatory program in that [State's] regulatory program [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 suspend 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 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 to comply with Section 274 of the Act.

Consequently, ~~I~~ we have determined that the suspension 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].

Appendix B - ~~Attachment~~ Enclosure 1 (Continued)

IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Atomic Energy Act, as amended, IT IS HEREBY ORDERED THAT THE AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED [date], IS SUSPENDED AS FOLLOWS:

A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL AFFECTED];

B. [IDENTIFY WHAT AEAIONS 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

Secretariat

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

Appendix B - ~~Attachment~~ Enclosure 2

~~DRAFT~~ SAMPLE~~:~~ *Federal Register* Notice Regarding the Suspension and Reassertion of NRC Authority

Suspension of [State] Regulatory Authority and the Reassertion of NRC Authority in [State]

AGENCY: U.S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of Suspension of the [State] Regulatory Authority and the Reassertion of the NRC Authority in [State].

SUMMARY: The NRC has suspended the [State's] regulatory authority over [identify part of agreement affected and material affected] and is 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.

FOR FURTHER INFORMATION CONTACT:

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

Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements 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 may suspend all or part of its agreement with the State.

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

Appendix B - ~~Attachment~~ Enclosure 2 (Continued)

reviewing [State's] program, the MRB recommended that the Commission suspend the State's agreement with NRC until improvements to assure adequate protection of public health and safety are incorporated into [State's[regulatory program. [Narrative of MRB findings.]

The Commission has considered the State of [Name] radiation control program and has agreed with the findings of the MRB, as well as with its recommendation to suspend the program.

[Narrative of MRB findings and any hearings held.]

[State] has indicated its desire to continue its radiation control program under the agreement. The [State] radiation control program has provided NRC staff with a "~~Corrective Action Management~~ Program Improvement Plan" describing actions to be taken to address the identified deficiencies, including specific goals and timetables. Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lifting the suspension of [State]. Notification of such cessation will be made to the State's Governor, the State's Congressional delegation, and all other Agreement and Non-Agreement States. There also will be a *Federal Register* Notice and a press release.

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~~ Regional Administrator], ~~Office of Nuclear Material Safety and Safeguards (NMSS)~~ NRC Region X.

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

Appendix B - ~~Attachment~~ Enclosure 3

~~DRAFT~~ SAMPLE~~:~~ Letter to Governor Regarding the Commission's Decision on Suspension

Dear Governor (Name):

As you are aware, Section 274j of the Atomic Energy Act (the Act) gives the Commission authority to suspend all, or part, of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements 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 may suspend all or part of its agreement with the State.

The last review of the [State] radiation control program found significant program deficiencies and the program was found to be [inadequate to protect the public health and safety and/or incompatible with the NRC's program.] [Describe hearing proceedings if held.] The Commission is suspending [State's Name] 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. Deficiencies exist in [State's Name] due to [facts requiring implementation of Section 274j(1)]. A copy of the Order is enclosed.

I understand that the State wishes to continue its radiation control program under the agreement. The [State] radiation control program has provided NRC staff with a "~~Corrective Action Management~~ Program Improvement Plan" describing actions to be taken to address the identified deficiencies, including specific goals and timetables. Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lift the suspension of the [State] agreement.

Your staff may contact [Name], Director, Office of Federal and State Materials and Environmental Management ~~Tribal~~ Programs (~~STP~~ FSME), at [telephone number] to discuss issues associated with this suspension.

Sincerely,

NRC Chairman

Enclosure:
As stated

Appendix C

~~DRAFT~~ SAMPLE~~:~~ Public Announcement to be Issued by the Office of Public Affairs

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

The Nuclear Regulatory Commission (NRC) is suspending the [State's Name] 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. Deficiencies exist in the [State's Name] radiation control program due to [actions requiring implementation of Section 274j(1)).

Under Section 274 of the Atomic Energy Act (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 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 [Name] assumed regulatory jurisdiction when an agreement with the NRC was signed in [Year].

Section 274j of the Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension 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 decision, the Commission will suspend all or part of its agreement with the State.

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

Appendix D

~~DRAFT~~ SAMPLE~~:~~ Letter~~s~~ 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 suspend [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement], and to reassert NRC regulatory authority over these materials, in order to protect the public health and safety.

[or if appropriate]

[Describe circumstance by which NRC is suspending the agreement and details of a hearing, if held.]

Once the deficiencies are addressed and the radiation control program is found to be adequate and compatible, the Commission will consider action to lift the suspension of the agreement with the [State].

The effective date of the suspension is [Date]. Enclosed is a copy of the *Federal Register* Notice which announces the suspension. We also expect to issue a press release in conjunction with the issuance of the *Federal Register* Notice.

Sincerely,

[NAME]
Director
Office of Congressional Affairs

Enclosure:
As stated

Appendix E
~~Suspension Procedure~~

~~DRAFT~~ SAMPLE~~:~~ Letter to U.S. Department of Labor on Suspension

Occupational Safety and Health Administration
Department of Labor

Dear Administrator:

This is to advise the Department of Labor (DOL) that under Section 274 of the Atomic Energy Act, the Nuclear Regulatory Commission (NRC) has suspended [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement].

The Order, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. Deficiencies exist in [State's Name] due to [facts requiring implementation of Section 274j(1)]. [State] desires to maintain and not terminate the agreement. When the deficiencies in the program have been addressed and the program is found to be adequate to protect public health and safety and compatible with the NRC program, NRC will consider lifting the suspension.

Enclosed is a copy of the Order for your information. We will notify you of the future changes in the status of the program.

Sincerely,

[NAME], Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management ~~Tribal~~ Programs

Enclosure:
As stated

Appendix F
~~Suspension Procedure~~

~~DRAFT~~ SAMPLE~~:~~ Letter to Licensees Regarding Suspension and Reassertion

Attention: [State] Licensees

The Nuclear Regulatory Commission (NRC) has suspended [State's] regulatory authority over [identify part of agreement affected and material affected] and is 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. Deficiencies exist in [State] due to [facts requiring implementation of Section 274j(1)].

Section 274j of the Atomic Energy Act (the Act) gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements 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 may suspend all or part of its agreement with the State.

This letter is to advise you 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 under NRC's authority [unless specific issues are addressed]. All communications concerning your use of [appropriate materials] should be addressed to:

Regional Office
Address
Phone number

A copy of the Order is available from the Regional Office. When [State] has addressed the deficiencies identified and the suspension is no longer required to protect the public health and safety, the [State's] regulatory authority will be returned. You will be notified of any changes in the regulatory authority.

Sincerely,

[NAME]
Regional Administrator
~~Director~~
~~Office of State and Tribal Programs~~

cc: [State]

Appendix G
~~Suspension Procedure~~

~~DRAFT~~ SAMPLE~~:~~ Letter to All States Regarding Suspension and Reassertion

(FSME-[Year]-[Letter #], Month, Subject])

Date

ALL AGREEMENT AND NON-AGREEMENT STATES

PROGRAM MANAGEMENT INFORMATION: NUCLEAR REGULATORY COMMISSION (NRC) ORDER TO SUSPEND THE [STATE'S NAME] REGULATORY AUTHORITY (~~SP-XX-XXX~~ FSME-[YEAR]-[LETTER #])

Enclosed, for your information, is the Order issued by the NRC suspending [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. Deficiencies exist in [State] due to [facts requiring implementation of Section 274j(1)].

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

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:

[NAME], Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management ~~Tribal~~ Programs

Enclosure:
As stated