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

Termination of a Section 274b Agreement
SA-115

Issue Date: ~~, 2007~~

Review Date: ~~, 2010~~

~~Paul H. Lohaus~~ Janet R. Schlueter
Director, ~~STP~~ DMSSA, FSME

Original signed by:
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Original signed by:
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~~Kathleen N. Schneider~~ Kim K. Lukes 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.

Procedure Title: *Termination of a Section 274b Agreement* **Procedure Number: SA-115**	**Page: of 8** **Issue Date: / /07**

I. INTRODUCTION

This procedure describes the process used by the Commission to terminate an Agreement State program.

II. OBJECTIVE

A. To provide the guidelines to be followed by the Nuclear Regulatory Commission (NRC) when considering whether or not to terminate an agreement pursuant to the authority contained in Section 274j(1) of the Atomic Energy Act (Act), as amended.

B. To describe the method for processing the termination, whether initiated at the request of the State or at the initiative of the NRC.

III. BACKGROUND

A. Section 274j of the Act, as amended, ~~gives~~ allows the Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of such State, ~~authority~~ to terminate its agreement with a State if such termination 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 (e.g., is found to be not compatible with the Commission's program). In cases where the Commission finds that program deficiencies are such that the State can no longer protect the public health and safety or continuing incompatibility results in significant national disruption, the Commission will institute proceedings to terminate the agreement with the State. The Commission can institute procedures to terminate an agreement even though the State has not been on probation. Procedures to address Agreement State probation can be found in the Office of Federal and State Materials and ~~Tribal~~ Environmental Management Programs (~~STP~~ FSME) Procedure SA-113, "*Placing an Agreement State on Probation*." Procedures to address emergency situations to temporarily suspend all or part of an agreement with a State can be found in ~~STP~~ FSME Procedure SA-112 "*Emergency Suspension of a Section 274b Agreement*."

B. The Commission's "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997, established the option of terminating an Agreement State program. Section 274j(~~i~~1) of the Act, as amended, calls on the

Commission to suspend or terminate an Agreement State program if "the State has not complied with one or more of the requirements" of Section 274.

C. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination as discussed in Section V.D.1. However, if the State requests termination of the Agreement, the notice and opportunity for a hearing to the State is not necessary. Notice of the proposed termination will also be published in the *Federal Register*.

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 terminate an Agreement State program.

B. The Executive Director for Operations (EDO) signs the Commission Paper containing the staff's recommendation based on the request initiated by the State Governor or MRB's recommendation that NRC initiate the proceedings to terminate an agreement.

C. ~~STP~~ FSME is responsible for taking the lead in the preparation and coordination of the first Commission Paper recommending the termination of the Agreement State program in question. ~~STP~~ FSME also coordinates all follow-up termination notifications, i.e., to the Governor, the *Federal Register*, the U.S. Department of Labor, Agreement State licensees, and ~~A~~all ~~Agreement and Non-Agreement~~ States.

D. The Office of the General Counsel (OGC) is the lead for the preparation of the Commission Paper containing the termination order and the *Federal Register* Notice announcing the Commission decision.

E. The Office of Congressional Affairs (OCA) is responsible for notifying Congressional Committees of the Agreement State program termination.

F. The Office of Public Affairs (OPA) is responsible for releasing a public announcement of the Commission's decision to terminate the agreement.

G. The appropriate NRC Region is responsible for taking the lead in conducting a meeting with the licensees in the State to explain the reassertion of NRC authority and present fee structure. This is to be done in consultation with the ~~Office of~~

~~Nuclear Material Safety and Safeguards (NMSS),~~ OGC and the Office of the Chief Financial Officer (OCFO).

H. The Commission or a Commission-appointed Special Agreement State Board is responsible for conducting an informal termination hearing, if so requested by the Agreement State.

V. GUIDANCE

A. Minimum Criteria for Termination

1. At the request of the Governor, NRC may terminate all or part of its Agreement with a State and reassert its authority. The letter should be addressed to the Chairman~~,~~ of the NRC~~,~~ from the Governor.

2. The Commission will institute formal procedures to terminate an agreement under the following circumstances:

   a. The State radiation control program is found to be inadequate to protect public health and safety, and no compensating program has been implemented;

   b. The State has been on probation for a period of time during which it failed to respond to NRC concerns regarding the State's ability to carry out a program to protect public health and safety; or

   c. The State radiation control 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 significantly disruptive to the national program among NRC and Agreement States for the regulation of Atomic Energy Act material.

3. The following are examples of situations where NRC would consider initiating formal procedures to terminate an agreement. This list is not inclusive and other situations may require consideration by the Commission at the recommendation of the MRB and the EDO.

   a. Significant loss of staff, which includes number of staff or those with critical skills, coupled with a State's inability to hire

appropriate replacements in a timely manner to meet the needs of the program.

b. Continual problems which manifest in the State's inability to perform adequate inspections, respond to incidents, events or allegations, or issue appropriate licenses.

c. State's inability to adopt compatible program elements over a significant period of time.

d. Continued probationary or suspension status for a State program.

B. MRB

1. The MRB will meet to discuss the specific program review findings if the State is in a situation where NRC would consider initiating formal procedures to terminate an agreement. These meetings are normally open to the public and Agreement States' representatives will be invited to attend (SA-106, *The Management Review Board)*. MRB's internal deliberation regarding the termination of an Agreement State program may be closed, given the predecisional nature of those discussions.

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 terminate the Agreement State program in question.

C. ~~STP~~ FSME

1. If it is the recommendation of the MRB and EDO that NRC initiate the proceedings to terminate 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 termination of the Agreement State program in question. The paper will also assess potential resource implications of NRC reasserting authority. (See Appendix A for sample Commission Paper, including a sample *Federal Register* Notice.)

2. The initial Commission paper will be coordinated with OGC, ~~NMSS,~~ OCFO and the appropriate Region.

D. 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), as amended. Section 274j(1) does not require such a hearing if termination is requested by the Governor.

2. If the State does not request a hearing or the State Governor requests termination, the Commission will proceed to make a final decision on the issue.

   a. OGC and FSME will be ~~is~~ the lead for preparation of a Commission Paper containing the termination order, the *Federal Register* Notice announcing the Commission decision, and letter notifying the Governor of the termination (see Appendix B or C for appropriate Commission Paper).

   b. ~~STP~~ FSME will provide as ~~background~~ supplemental information to the ~~second~~ Commission Paper:

      ~~i~~i. Public Announcement (see Appendix ~~C~~D);

      ii. Letters to Congressional Committees (see Appendix ~~D~~E);

      iii. Letter to U.S. Department of Labor (DOL), U.S. Department of Energy (DOE), Council on Environmental Quality (CEQ), U.S. Food and Drug Administration (FDA), U.S. Environmental Protection Agency (EPA), and Department of Homeland Security (DHS) (see Appendix ~~E~~F).

      iv. Letter to State Licensees (see Appendix G).

      v. All Agreement and Non-Agreement States Letter (see Appendix H).

3. If the State does request a hearing, the Commission will initiate the hearing process described in Section E~~. Hearing,~~ below.

4. Whether or not a hearing is requested, if the Commission decides not to support the recommendation to terminate the State's program, the Governor will be notified of this result.

E. Hearing

1. The hearing for the termination (including the termination of a program that had been previously suspended) 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 a 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 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 termination. 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.

F. Agreement State and NRC Activities During Termination Proceedings

During the period of time the State is requesting termination of an agreement or NRC is pursuing termination of an agreement with a State, State and NRC activities should be coordinated so that there is continued protection of the public

health and safety. ~~STP~~ FSME will coordinate with the State~~,~~ and Region~~, and NMSS~~ as to the necessary technical assistance to continue the protection of public health and safety.

G. Additional Coordination After Terminations

1. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. Lead for the meeting should be the Region in consultation with ~~NMSS,~~ OGC and OCFO.

2. After the termination of the agreement, ~~the STP~~ FSME will issue ~~the~~ letters to the U.S. Department of Labor and other Federal Agencies advising the various agencies ~~Department~~ of the effective date of the termination of the agreement (see Appendix ~~E~~F).

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

4. ~~STP~~ FSME will prepare a letter to All Agreement and Non-Agreement States notifying them of the effective date of the termination and, if appropriate, enclosing a copy of the Order or *Federal Register* Notice (see Appendix ~~G~~H).

5. The Region will coordinate with the State so that all necessary action is taken to have the files for the licenses transferred to the NRC.

H. Renewed Interest in 274b

A State that has had an agreement terminated by the NRC may, at a later date, express interest in obtaining a new agreement. The State should be treated as other Non-Agreement States interested in agreements, and ~~STP~~ FSME Procedure SA-700, *Processing a New Agreement*, should be followed for these negotiations.

VI. APPENDICES

Appendix A - Sample Commission Paper for Reassertion of NRC Authority in an Agreement State and Request for Hearings

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

Appendix B - ~~Termination Procedure,~~ Sample Commission Paper for Reassertion of NRC Authority in an Agreement State
~~Attachment~~ Enclosure 1 - Order Terminating Agreement State Program
~~Attachment~~ Enclosure 2 - *Federal Register* Notice Regarding Reassertion
~~Attachment~~ Enclosure 3 - Letter to Governor Regarding the Commission Decision on Termination

Appendix C - Sample Commission Paper for Reassertion of NRC Authority in an Agreement State upon the Request of a State Governor
Enclosure 1 - Order Terminating Agreement State Program
Enclosure 2 - *Federal Register* Notice Regarding Reassertion
Enclosure 3 - Letter to Governor Regarding the Commission Decision on Termination

Appendix ~~C~~D - ~~Termination Procedure,~~ Sample Public Announcement to be Issued by the Office of Public Affairs

Appendix ~~D~~E - ~~Termination Procedure,~~ Sample Letters to Congressional Committees

Appendix ~~E~~F - ~~Termination Procedure,~~ Sample Letter to U.S. Department of Labor and other Federal Agencies on Termination

Appendix ~~F~~G - ~~Termination Procedure,~~ Sample Letter to Licensees Regarding Termination and Reassertion

Appendix ~~G~~H - ~~Termination Procedure,~~ Sample Letter to All States Regarding Termination and Reassertion

VII. REFERENCES

1. ~~STP~~ FSME Procedure SA-106, *The Management Review Board*
2. ~~STP~~ FSME Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*
3. ~~STP~~ FSME Procedure SA-113, *Placing an Agreement State on Probation*
4. ~~STP~~ FSME Procedure SA-114, *Suspension of a Section 274b Agreement*
5. ~~STP Procedure SA-115, *Termination of a Section 2746 Agreement,* supercedes Office of State Programs Internal Procedure D.21~~
~~6.~~ ~~STP~~ FSME Procedure SA-700, *Processing a New Agreement*
~~7~~ 6. "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997

VIII. ADAMS REFERENCE DOCUMENTS

The previous revision of SA-115 can be found in the Agencywide Documents Access and Management System as follows:

Date	Document Title/Description	ADAMS ML#
05/15/2001	STP Procedure SA-115, Termination of a Section 274b Agreement	ML011370786

Appendix A

~~Termination Procedure~~

~~DRAFT~~ SAMPLE~~:~~ 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] 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 ~~suspension~~ 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.]

Appendix A (Continued)

[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.

~~COORDINATION:~~

~~This paper has been coordinated with the Office of the General Counsel, which has no legal objection.~~

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

~~Attachments~~ Enclosures:
1. MRB Recommendations ~~or Letter from Governor Requesting Termination~~
2. Proposed *Federal Register* Notice Notifying [State] of an Opportunity for a Hearing

~~Attachment~~Appendix A - Enclosure 1

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

MEMORANDUM TO: Executive Director for Operations

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

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

On [~~d~~Date], the Management Review Board (MRB) met to consider the review of the [State] Agreement State program. Enclosed are the ~~[attached are~~ 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 the 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]~~)~~.

~~Attachment~~ Enclosure:
As stated

~~Attachment~~Appendix A - Enclosure 2

~~DRAFT~~ SAMPLE~~: Proposed~~ *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:

[~~STP~~ FSME CONTACT], Office of Federal and State Materials and ~~Tribal~~ Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number], email XXX@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act (Act) of 1954, as amended ~~in 1959~~, 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~~s~~ of the program. In reviewing [State's] program, the MRB has recommended that the Commission terminate the State's agreement with NRC [Narrative of MRB findings and any hearings.]

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

Pursuant to the provisions of Section 274j of the Act ~~of 1954~~, 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.

Appendix B

~~Termination Procedure~~

~~DRAFT~~ SAMPLE~~:~~ Commission Paper for Reassertion of NRC Authority in an Agreement State

FOR: The Commissioners

FROM: General Counsel

SUBJECT: REASSERTION OF U.S. NUCLEAR REGULATORY COMMISSION (NRC) REGULATORY AUTHORITY OVER [ALL OR PART OF] THE [STATE] AGREEMENT

PURPOSE:

To inform the Commission that [State] was offered an opportunity for a hearing and not having requested one, to recommend termination of [all or part] of the [State] agreement.

SUMMARY:

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

DISCUSSION:

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

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

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

Enclosure 1 is a Commission Order which terminates the Agreement and reasserts NRC authority over the existing State licensees. The proposed *Federal Register* Notice shown in Enclosure 2

would provide notice that the Commission found termination of the Agreement to be necessary to protect 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 public announcement 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.

~~COORDINATION:~~

~~This paper has been coordinated with the Office of State and Tribal Programs.~~

RECOMMENDATION:

Appendix B (Continued)

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 termination (~~Attachment~~ Enclosure 3).

~~4. Note a public announcement will be issued by the Office of Public Affairs (Attachment 4).~~

~~5. Note that the appropriate Congressional Committees will be informed of the Commission's decision by the Office of Congressional Affairs (Attachment 5).~~

RESOURCES: [TO BE DEVELOPED IN COORDINATION WITH THE OFFICE OF THE CHIEF FINANCIAL OFFICER]

The staff estimates that the incremental increase in technical staff effort to assume regulatory authority for the Program will be [FTE] in FY [year(s)]. This funding is included in the FY [year(s)] budget request(s). This [FTE] is needed to process the pending license requests, take other licensing actions necessary to conform the licenses to NRC requirements, and conduct the workshops. The magnitude of this effort is based on the preliminary assessment of the State's information and files based on exchanges of information with the State.

COORDINATION:

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

General Counsel

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

~~Attachment~~Appendix B - Enclosure 1

Draft

Order Terminating Agreement State Program

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

[Name of State]
[Agreement State Program]

ORDER TERMINATING AGREEMENT STATE PROGRAM

I

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

On [Date], the State of [Name] entered into an agreement (Agreement) with the Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State with respect to ~~[byproduct material as defined in Section 11e(l) of the (radioisotopes) and/or byproduct material as defined in Section 11e(2) of (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]~~ [identify part of agreement affected and material affected]. The Agreement authorized the State of [State's Name] to regulate these materials for the protection of public health and safety.

II

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

A review of [State's] Agreement State program was conducted on [Date]. As a result of this review and Management Review Board (MRB) recommendations, the Commission has

determined that [State's] regulatory program is inadequate to protect public health and safety. The review ascertained that [State's] Agreement State program failed to adequately protect public health and safety by [facts directly bearing on failure of the program to adequately maintain public health and safety].

[and/or the following:]

In addition, the review and MRB evaluation ascertained that [State's] Agreement State program has not complied with one or more requirements of the Act, i.e., it is incompatible. [Describe facts directly bearing on incompatibility between the two programs.]

III

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

Section 274d of the Act provides, in part, that the Commission shall enter into an Agreement with a State to discontinue the Commission's regulatory authority if the Commission finds that the State's regulatory program is adequate to protect the public health and safety with respect to materials covered by the proposed agreement and the State's regulatory program complies with Section 274o of the Act and in all other respects is compatible with the Commission's program for the regulation of such materials.

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

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

Consequently, I have determined that the termination is required [to protect the public health and safety] OR [because the State has not complied with one or more of the requirements of Section 274 of the Act of 1954, as amended].

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

IV

Accordingly, pursuant to Sections 161b, 161c, 161i, 161o, and 274 of the Act of 1954, as amended, and Section 651(e) of the Energy Policy Act of 2005 (EPAct), IT IS HEREBY ORDERED THAT THE AGREEMENT BETWEEN THE COMMISSION AND [STATE], DATED _____, TERMINATE AS FOLLOWS:

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

FOR THE NUCLEAR REGULATORY COMMISSION

Secretariat

Dated at Rockville, Maryland
this day of, ~~[XXXX]~~ [DATE]

~~Attachment~~Appendix B - Enclosure 2

~~DRAFT~~ SAMPLE~~:~~ *Federal Register* Notice Regarding Reassertion

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

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

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

SUMMARY: The NRC has terminated [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected [or because of compatibility concerns].

FOR FURTHER INFORMATION CONTACT:

[~~STP~~ FSME CONTACT], Office of Federal and State Materials and ~~Tribal~~ Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number], email XXX@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Under Section 274 of the Atomic Energy Act of 1954 (Act), as amended ~~in 1959 (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.

~~[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 reviews of the program. In reviewing [State's] program, the MRB recommended that the Commission terminate the State's agreement with NRC. The Commission has considered the State of [State's Name] radiation control program and has agreed with the findings of the MRB, as well as with its recommendation to terminate the program.

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

[Narrative of MRB findings and any hearings.]

Pursuant to the provisions of Section 274j of the Act of 1954, as amended, the Commission found that it is necessary to terminate the [State] agreement over [identify part of agreement affected and material affected] and reassert NRC's authority in [State] in order to protect the public health and safety. This finding ensures that there will be adequate licensing and inspection of Act activities. This reassertion of authority will become effective on [Date].

Persons seeking licenses for activities within [State] involving [materials affected] should file such applications with [Regional Office information].

Existing licensees in [State] are being advised of this change in regulatory authority. Pursuant to a Commission Order published with this notice, existing [State] licenses affected by this change will become effective NRC licenses under conditions set forth in the Order.

For information regarding this reassertion action, contact [Director], ~~Office of Nuclear Material Safety and Safeguards~~ FSME.

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

Dated at Rockville, Maryland, this [DATE] day of [month], [Year].

For the Nuclear Regulatory Commission.

Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

~~Attachment~~Appendix B - Enclosure 3

~~DRAFT~~ SAMPLE~~:~~ Letter to Governor Regarding the Commission Decision on Termination

Dear Governor [Name]:

[As a result of your letter of [Date], the Commission, on [Date], agreed to terminate [State's] [Identify part of agreement affected and material affected] and reasserting the Nuclear Regulatory Commission's (NRC's) authority in [State]. The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected.

[or]

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

Enclosed is a copy of the *Federal Register* Notice which announces NRC reassertion. We will also issue a public announcement 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 [~~d~~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 cooperation in this matter. [Name], Director, Office of State and Tribal Programs FSME, at [telephone number] can answer any questions that your staff may have.~~

We appreciate the State's support of the Agreement State Program since [Year] and the professionalism and courteous manner in which your staff have worked with the NRC. We look forward to continuing a productive relationship with your State on other regulatory matters under our jurisdiction.

Finally, we appreciate the State's cooperation in this matter to ensure a smooth transition of regulatory authority from the State to the NRC. [Director], Office of Federal and State Materials and Environmental Management Programs, at [phone number], can answer any questions that your staff may have.

Sincerely,

Chairman

Enclosure:
As stated

Appendix C

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] 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 public announcement 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.

Appendix C (Continued)

2. Approve the publication of the *Federal Register* Notice announcing the Commission decision (Enclosure 2). The Commission Order will be published in the *Federal Register* along with the notice of reassertion of authority.

3. Approve the letter notifying the Governor of [State] of the termination (Enclosure 3).

RESOURCES:

[TO BE DEVELOPED IN COORDINATION WITH THE OFFICE OF THE CHIEF FINANCIAL OFFICER]

The staff estimates that the incremental increase in technical staff effort to assume regulatory authority for the Program will be [FTE] in FY [year(s)]. This funding is included in the FY [year(s)] budget request(s). This [FTE] is needed to process the pending license requests, take other licensing actions necessary to conform the licenses to NRC requirements, and conduct the workshops. The magnitude of this effort is based on the preliminary assessment of the State's information and files based on exchanges of information with the State.

COORDINATION:

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

Appendix C - 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 of 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 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.

Enclosure 1 (Continued)

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 (EPAct), IT IS HEREBY ORDERED THAT THE 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.

[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]

Appendix C - 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], email 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].

Appendix C - Enclosure 2 (Continued)

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], 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

Appendix C - Enclosure 3

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 public announcement and inform the appropriate Congressional Oversight Committees in conjunction with the issuance of the *Federal Register* Notice.

[Radiation Control Program Director], [State], was informed of the decision on [Date]. I understand [Name of Director] is making arrangements for transfer of the appropriate files and material to the NRC.

We appreciate the State's support of the Agreement State Program since [Year] and the professionalism and courteous manner in which your staff have worked with the NRC. We look forward to continuing a productive relationship with your State on other regulatory matters under our jurisdiction.

Finally, we appreciate the State's cooperation in this matter to ensure a smooth transition of regulatory authority from the State to the NRC. [Director], Office of Federal and State Materials and Environmental Management Programs, at [Phone Number], can answer any questions that your staff may have.

Sincerely,

[Chairman]

Enclosure: *Federal Register* Notice

~~Appendix C~~ Appendix D

~~Termination Procedure~~

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

NRC TO REASSERT REGULATORY AUTHORITY IN [STATE]

The Nuclear Regulatory Commission [NRC] is reasserting its regulatory authority over the possession and use of byproduct, source, and special nuclear materials in [State]~~.~~ [OPTIONAL TEXT: at the request of the Governor].

The action, which is effective on [Date], is being taken in order to ensure that public health and safety will be protected. [Facts requiring termination should be given, including information on a hearing, if held.]

Under Section 274 of the Atomic Energy Act of 1954, as amended ~~in 1959~~, 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 [State Name] signed an agreement with the NRC in [Year] that authorized the State to regulate these radioactive materials.

Section 274j of the Atomic Energy Act gives the Commission authority to terminate all or part of its agreement with a State if the termination 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 will terminate all or part of its agreement with the State.

Licensees in [State] are being advised of the NRC's action in Order [Date], and the NRC staff has identified files which are to be transferred from [State] authorities. In the meantime, the affected [State's Name] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements.

~~Appendix D~~ Appendix E

~~Termination Procedure~~

~~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 terminate [State's] agreement relinquishing the Nuclear Regulatory Commission (NRC) regulatory authority over [identify categories of material under the agreement], and to reassert NRC licensing and regulatory authority over these materials, in order to protect the public health and safety.

[or if appropriate]

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

The effective date of the termination is [Date]. Enclosed is a copy of the *Federal Register* Notice announcing NRC reassertion of regulatory authority. A Press Release will be ~~released~~ issued in conjunction with the ~~issuance~~ publication of ~~the *Federal Register* Notice~~ this notice.

Sincerely,

Director
Office of Congressional Affairs

Enclosure:
As stated

Appendix ~~E~~F

~~Termination Procedure~~

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

Mr. _____, Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear ~~Administrator~~ Mr. _____:

This is to advise the ~~Department of Labor~~ [AGENCY] that [OPTIONAL TEXT: at the request of the Governor of the [State] and] under Section 274 of the Atomic Energy Act, the Nuclear Regulatory Commission ~~[~~(NRC)~~]~~ terminated [State's] agreement relinquishing the NRC regulatory authority over [identify categories of material under the agreement]. ~~[State's]~~

The effective date of the termination is [Date]. Enclosed is a copy of the ~~Order for your information.~~ *Federal Register* notice announcing NRC reassertion of regulatory authority. A press release will be released in conjunction with the issuance of this notice.

Sincerely,

Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and ~~Tribal~~ Environmental Management Programs

Enclosure:
As stated

Appendix ~~E~~F (Continued)

Identical letters to:

Mr. _____, Assistant Secretary
Congressional, Public and Intergovernmental Affairs
U.S. Department of Energy
N3641 1000 Independence Ave. SW
Washington, DC 20585-0001

Mr. _____, Chairman
Council on Environmental Quality
722 Jackson Place NW
Washington, DC 20503-0002

Dr. _____, Director
Center for Devices & Radiological Health
Food and Drug Administration
9200 Corporate Boulevard
Rockville, MD 20850-3229

Ms. _____, Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Ms. _____, Director
Office of Legislative and Intergovernmental Affairs
Department of Homeland Security
1800 F St. NW
Governmental Services Administration Bldg.
Washington, DC 20555

Appendix ~~F~~G

~~Termination Procedure~~

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

Attention: [State] Licensees

The Nuclear Regulatory Commission ~~[~~(NRC)~~]~~ has terminated [State's] regulatory authority over [identify part of agreement affected and material affected] and 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.

This letter is to advise licensees that activities being conducted under your [State's] license will be subject to regulatory control by NRC. In the meantime, your [State] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements. All communications concerning your use of [appropriate materials] should be addressed to:

Regional Office
Address
Phone number

A copy of the Order is enclosed.

Regional Administrator
~~Director~~
~~Office of Nuclear Material Safety and Safeguards~~

Enclosure:
As stated

Appendix ~~G~~H

~~Termination Procedure~~

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

(FSME-[YEAR]-[LETTER NUMBER], [MONTH], [CATEGORY],[SUBJECT])

[DATE]

ALL AGREEMENT AND NON-AGREEMENT STATES

PROGRAM MANAGEMENT INFORMATION: NRC ORDER TO TERMINATE [STATE'S NAME] REGULATORY AUTHORITY AND REASSERT NRC REGULATORY AUTHORITY (~~STP~~ FSME-XX-XXX)

Enclosed, for your information, is the Order issued by the Nuclear Regulatory Commission ~~[~~(NRC)~~]~~ terminating [State's] regulatory authority over [identify part of agreement affected and material affected] and reasserting NRC's authority in [State].

The action, which was effective on [Date], is being taken to ensure that public health and safety will be protected.

Licensees in [State] are being advised of NRC's action. In the meantime, the affected [State's Name] licenses, as currently issued, will remain in effect until they can be revised, if necessary, to meet NRC's requirements.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Staff Contact INTERNET: XXX@NRC.GOV
TELEPHONE: FAX:

Director
Division of Material Safety and State Agreements
Office of Federal and State Materials and ~~Tribal~~
Environmental Management Programs

Enclosure:
As stated