



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

Emergency Suspension of a Section 274b. Agreement
SA-112

Issue Date:

Review Date:

| **Brian McDermott**
Director, MSSA

Date:

A. Duncan White
Branch Chief, MSSA

Date:

Michelle Beardsley
Procedure Contact, MSSA

Date:

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NOTE

***Any changes to the procedure will be the responsibility of the FSME Procedure Contact.
Copies of the FSME procedures are available through the NRC website.***



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

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I. INTRODUCTION

This procedure describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to temporarily suspend a State's 274b. Agreement (Agreement) with the NRC when an emergency situation exists requiring immediate action to protect public health and safety, and the State is not able or has failed to take steps to contain or eliminate the cause of danger within a reasonable time.

II. OBJECTIVE

To provide the guidelines that will govern the NRC decisions to exercise the authority contained in Section 274j.(2) of the Atomic Energy Act, as amended (Act) [to temporarily suspend all or part of a State 274b. Agreement.](#)

Note: This procedure does not address the non-emergency situation in which there is no immediate danger to the public health and safety. Guidelines for non-emergency suspension are found in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-114, *Suspension of a Section 274b. Agreement.*

III. BACKGROUND

- A. Section 274j.(2) of the Act, gives the Commission the authority to temporarily suspend all or part of its Agreement with a State, without a hearing, when an emergency situation exists requiring immediate action to protect public health and safety, and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.
- B. The Commission will exercise this authority only during the period of the emergency [to the extent necessary to contain or eliminate the danger.](#) Unless acting pursuant to the Governor's request, the NRC will notify the Governor of the State [\(See Appendix A\)](#) prior to issuing the [Order temporarily y-suspending all or part of a State's Section 274b. Agreement.](#) ~~(Ssee Appendix A and B). The authority may be exercised with respect to all or part of the State's Agreement.~~

IV. ROLES AND RESPONSIBILITIES

- A. The Executive Director for Operations (EDO):
 - 1. [Signs the Order temporarily suspending all or part of a State's Section 274b. Agreement,](#)

2. Informs the Commission when, based on NRC staff recommendations, an immediately effective Order is issued temporarily suspending all or part of the State Section 274b. Agreement; and
3. Submits a memorandum to the Commission detailing the nature of the emergency situation and the actions taken to contain or eliminate the danger (Ssee Appendix DC).
 - a. ~~is responsible for informing the Commission when, based on NRC staff recommendations, an immediately effective Emergency Suspension of a Section 274b. Agreement Order is issued (see Appendix B) and for submitting a memorandum to the Commission detailing the nature of the emergency situation and the actions taken to contain or eliminate the danger (see Appendix C).~~

B. FSME:

1. The Office Director signs the Order notifying State licensees of the temporary transfer of regulatory authority to the NRC (See Appendix ~~CD~~).
2. ~~is responsible for taking the~~ Lead for in the preparation and coordination of a Commission memorandum detailing the emergency suspension of the Agreement in question.
- 4.3. The Division of Materials Safety and State Agreements (MSSA), FSME, ~~also~~ coordinates all follow-up emergency suspension notifications, (e.g., to the Governor, and All Agreement and Non-Agreement States).

C. ~~C.~~—The Office of Public Affairs (OPA):

- ~~is responsible for issuing~~ a press release (~~S~~see Appendix ~~ED~~).

D. ~~D.~~—The Office of Congressional Affairs (OCA):

- ~~is responsible for notifying~~ Congressional committees (~~S~~see Appendix ~~FE~~).

E. ~~E.~~—The Office of General Counsel (OGC):

1. Consults with the Director, ~~of~~ FSME concerning the legality of proposed action.
2. Reviews and comments for legality and concurrence, as appropriate, on the proposed Orders, the final Commission paper and other related documents.

F. The appropriate NRC Region:

1. ~~Coordinates—Coordinates~~ ~~is responsible for coordinating~~ with the State to gather ~~so that all~~ necessary information regarding the emergency situation and Agreement State licensees which may include transfer of licenses, license files and other appropriate material. ~~is gathered and action is taken to notify all licensees from the Agreement State radiation control program~~ (~~S~~see Appendices ~~GF and KJ~~).
2. Designates personnel to handle any reported events and inspections, as necessary, during the temporary suspension.

V. GUIDANCE

A. Minimum Criteria for Emergency Suspension

1. NRC may suspend an Agreement, pursuant to Section 274j.(2), in the case of an emergency involving byproduct, source, or special nuclear material, when the situation presents a danger to the public health and safety and the Agreement State program is ~~unnot~~able, or has not taken effective steps, to eliminate the cause of the danger **within a reasonable time after the situation arose**.
2. In evaluating emergency situations, the NRC will consider whether the Agreement State has failed to take, or is prevented from taking, necessary steps to protect the public health and safety. Factors that are appropriate for consideration include:
 - a. The timeliness and adequacy of actions being taken by the State in response to the emergency;
 - b. Whether the State can satisfactorily resolve the emergency situation; and
 - c. Whether the State is implementing, or is committed to implement, program improvements to address the cause of the emergency situation.
3. The following types of conditions, if not appropriately addressed by the State to prevent the danger, are examples that could result in a consideration of emergency suspension:

- a. A condition or conditions that caused or could cause an individual or individuals to receive a dose significantly in excess of those basic dose limits set forth in Subpart C of 10 CFR Part 20;
- b. Conditions that caused or could cause an individual to receive a dose significantly in excess of those basic dose limits set forth in Subpart D of 10 CFR Part 20;
- c. Conditions that caused, or could cause, individuals to receive a dose significantly in excess of those dose limits applicable to a certain class of licenses set forth in other parts of 10 CFR that Agreement States must adopt under the Commission Policy Statement for Adequacy and Compatibility, such as Part 35 limits for patient release;
- d. Conditions that caused or could cause an individual to receive a dose significantly in excess of the limits set forth in Table 2 to Appendix B of 10 CFR Part 20 resulting from radioactive contamination to the environment (air, water, effluents); or
- e. A pandemic or any other event (natural or man-made) that would prevent or disrupt an Agreement State from being able to respond to a significant event or to execute its Continuity of Operations (COOP) or Pandemic Response Plan.
 - i. In the event an Agreement State would need to execute its COOP and/or Pandemic Response Plan, it is anticipated that the NRC will need to be able to answer certain questions regarding any regulatory, safety or security issues as the result of the COOP/Pandemic situation. (See Appendix ~~K~~H for a listing of these questions).
 - ii. Establishing and maintaining an Agreement State COOP and/or Pandemic Response plan is not a requirement under 274b. Agreements; however, NRC would still need to be informed of this occurrence and the State's actions in order to respond to other Federal/State agencies or Congressional inquiries.

B. Initiation of Emergency Suspension Action

1. If the Governor of a State requests that the NRC temporarily suspend part of its Agreement, MSSA should advise the State to make the request by a telephone call to the EDO, in coordination with the Director, FSME, or in off hours, to the NRC Emergency Operations Center (EOC). Such a request should include the specific nature of the emergency and its possible impacts.

2. ~~2.~~—If NRC initiates the emergency suspension, NRC evaluates the situation to determine if an emergency exists that:~~1)~~ has the potential to endanger public health and safety;~~2)~~ requires immediate action; and~~3)~~ the States has failed, or is unable, to address the situation in a reasonable time.
 - a. The NRC notifies (e.g., by telephone, email, or letter) the State Governor of the NRC's determination that:
 - i. ~~1)~~~~a~~An emergency situation exists with respect to any material covered in the State's Section 274b. Agreement that creates a danger requiring immediate action to protect the **health** or safety of persons either within or outside the State; and
 - ii. ~~2)~~~~t~~The States has not taken steps, or has informed the NRC that it will not or cannot take the steps necessary, to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

- b. The notification should also explain:
 - i. The NRC will temporarily suspend (all or part) of the State's Section 274b. Agreement via an Order for the duration of the emergency, and will exercise this authority only to the extent necessary to contain or eliminate the danger;⁷
 - ii. The actions the State must take, if possible, to address the emergency situation before the NRC will reinstate its Section 274b. Agreement;
 - iii. How NRC plans to handle license fees;¹² and
 - iv. How NRC plans to handle violations during this period.

—The NRC issues an Order temporarily suspending all, or part, of the Section 274b. Agreement with the State and reasserts regulatory authority over certain radiological materials and activities covered by the Agreement.

- 3. The Order should explain how the State can inform the NRC of a change in circumstances that might justify lifting of the suspension.
- 4. The NRC issues an Order to State licensees notifying them of the emergency suspension of all, or part, of the Section 274b. Agreement and of the NRC reassertion of regulatory authority over the specified radiological materials and activities.
 - a. The Order should also explain:
 - i. The NRC recognizes the State licenses. State licensees must comply with State law and their license conditions, and must submit notifications to the State and the NRC during the temporary suspension.
 - ii. How fees will be handled, including whether pending fees should be paid to the State or the NRC during the period the licensees are under NRC jurisdiction.

¹ The NRC staff should evaluate whether State licensees should pay State or NRC fees during the temporary suspension, in consideration of the case-by-case factors and in coordination with the Office of Chief Financial Officer (OCFO) and OGC.

- iii. How licensees will be informed of the lifting of the Order and return of regulatory authority to the State.

5. For events which may warrant consideration of emergency suspension, but for which there is a reasonable basis for presumption that a State will satisfactorily resolve the emergency situation, the Region will inform the State of necessary actions that the State should take and that an emergency suspension under Section 274j.(2) will not be issued.

C. Needed Information

13. To implement an emergency suspension in an efficient and effective manner, the NRC ~~will~~ ~~would~~ need to collect the following information, ~~at a minimum~~:

- a. A list of licensees, ~~licensees' addresses~~ and locations of use;
- b. A telephone or e-mail list of licensees in order to notify them of emergency suspension; and,
- c. The status of any amendments or new applications with immediate health and safety consequences.

24. If this information cannot be obtained prior to or shortly after an emergency suspension, NRC will use the National Source Tracking System (NSTS) to identify and locate the licensees with risk-significant quantities of radioactive material. In the future, the Integrated Source Management Portfolio (ISMP) will replace the need to collect the above listed information from the State.

~~5. Emergency suspension should only be used for a short term. If the emergency suspension will continue for an indefinite period, NRC will initiate steps for a full suspension or termination of the 274b. Agreement (see FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*, and FSME Procedure SA-115, *Termination of a Section 274b. Agreement*).~~

CD. Withdrawal of Emergency Suspension

1. When the emergency situation is contained or eliminated, the EDO will lift the suspension by notifying the Governor of the State, in writing, that the emergency suspension is no longer in effect (see Appendix ~~HIG~~).
2. OPA is responsible for issuing a press release (see Appendix ~~IJH~~).
3. OCA is responsible for notifying Congressional committees (see Appendix

JK†).

4. The appropriate NRC Region will notify ~~the~~-affected licensees or groups of licensees in the State that the emergency suspension is no longer in effect (see Appendix LKJ).
5. FSME will inform the State of continuing actions which the State must carry out in order to prevent another emergency.

E. ~~D.~~—Impact of the Emergency Suspension

1. ~~5~~—Emergency suspension should only be used for a short term. If the emergency suspension will continue for an indefinite period, NRC will initiate steps for a full suspension or termination of the 274b. Agreement (Ssee FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*, and FSME Procedure SA-115, *Termination of a Section 274b. Agreement*).
2. Depending on a State's ability to address the condition that precipitated the emergency suspension, the Management Review Board (MRB) will evaluate the Agreement State's continued ability to protect public health and safety. The MRB will consider whether it may be necessary to place the State on heightened oversight (Ssee FSME Procedure SA-122, *Heightened Oversight and Monitoring*).
- 4-3. NRC will initiate enforcement actions in response to violations of the NRC Order issued to State licensees during the emergency suspension to the extent necessary to address immediate health and safety concerns arising out of the emergency situation. If the NRC becomes aware of other violations by State licensees during the temporary suspension, NRC will collect and compile such information to transfer to the Agreement State upon termination of the emergency suspension.

~~2.~~—

~~Depending on a State's ability to address the condition that precipitated the emergency suspension, the Management Review Board (MRB) will evaluate the Agreement State's continued ability to protect public health and safety. The MRB will consider whether it may be necessary to place the State on heightened oversight (see FSME Procedure SA-122, *Heightened Oversight and Monitoring*).~~

VI. APPENDICES

- Appendix A - Sample Notification to the Governor of [State] of Emergency Suspension
- Appendix B - Sample Order Temporarily Suspending 274b. Agreement
- Appendix C - Sample Memorandum to the Commission Regarding the Emergency Suspension of All or Part of an Agreement
- Appendix D- Sample Order Notifying State Licensees of Temporary Suspension**
- Appendix ~~ED~~ - Sample Press Release
- Appendix ~~FE~~ - Sample Congressional Letter on Emergency Suspension
- Appendix ~~GF~~ - Sample Letter to Affected Agreement State Licensees regarding the Emergency Suspension

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**Appendix H Questions to be asked in the Event of Continuity of Operations or
Pandemic Plan Execution**

Appendix **HIG** - Sample Notification of Lifting Suspension

Appendix **IJH** - Sample Press Release on Lifting Temporary Suspension

Appendix **IJK** - Sample Congressional Letter on Lifting Temporary Suspension

Appendix **KLJ** - Sample Letter to Affected Agreement State Licensees on Lifting
Temporary Suspension

~~Appendix LK—Questions to be asked in the event of Continuity of Operations or
Pandemic Plan Execution~~

VII. REFERENCES

1. FSME Procedure SA-106, *The Management Review Board (MRB)*
2. FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*
3. FSME Procedure SA-115, *Termination of a Section 274b. Agreement*
4. FSME Procedure SA-122, *Heightened Oversight and Monitoring*

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VIII. ADAMS REFERENCE DOCUMENTS

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

No.	Date	Document Title/Description	Accession Number
1	7/18/02	STP Procedure SA-112	ML023020536
2	2/22/07	FSME-07-020, Opportunity to Comment on Draft Revisions to FSME Procedure SA-112	ML070570341
3	2/22/07	FSME Procedure SA-112, Draft Revision	ML070570359
4	9/25/07	FSME-07-089, Final FSME Procedure SA-112	ML072700496
5	9/25/07	FSME Procedure SA-112	ML072510003
6	9/25/07	Redline/Strikeout Copy	ML072510004
7	9/25/07	Resolution of Comments	ML072610485
8	11/08/10	FSME-10-093, Opportunity to Comment on Draft Revisions to FSME Procedures SA-112 and SA-114	ML103070271

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Appendix A

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

Dear Governor [Name]:

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

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

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

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

Sincerely,

Chairman

Appendix B

Sample Order Temporarily Suspending a Section 274b. Agreement

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
[Insert name of State] SECTION 274B.) EA-YY-XXXX
AGREEMENT)
)

ORDER TEMPORARILY SUSPENDING THE SECTION 274b. AGREEMENT
WITH [Insert name of State] AND REASSERTING U.S. NUCLEAR
REGULATORY COMMISSION REGULATORY AUTHORITY
(EFFECTIVE IMMEDIATELY)

I

[This section should set forth the name of the Agreement State and background information regarding when the program was initiated, what type of materials are covered in the Section 274b. Agreement and the authority of the Commission and the Governor of the State to enter into this type of agreement. In addition, this section should state the authority of the Commission to temporarily suspend the State's Section 274b. Agreement, effective immediately. The following example is provided as sample text for this section.]

Pursuant to § 274j.(2) of the Atomic Energy Act of 1954, as amended (AEA or the Act), 42 U.S.C. § 2021(j)(2), the U.S. Nuclear Regulatory Commission (NRC) temporarily suspends [all or part] of the Section 274b. Agreement that authorized [insert name of State] to regulate [list the radiological materials and activities covered under the State's Section 274b. Agreement] and reasserts regulatory authority over the specified radiological materials [activities or individual license] (as listed in Section A of this Order). The NRC finds that an emergency situation exists with respect to these specified materials [activities or individual license] creating a danger that requires immediate action to protect the health or safety of persons within or outside the State. The NRC also finds that the State failed [or was unable] to take steps necessary to contain or eliminate the cause of the danger [within a reasonable time] after the situation arose, and this created an emergency situation that requires the NRC to temporarily suspend [all or part] of the State's Agreement in order to protect public health and safety.

[Insert name of State] is an Agreement State. Pursuant to Section 274 of the AEA, 42 U.S.C. § 2021, on [Date], the State of [insert name of State] assumed, and the NRC [or Atomic Energy Commission (AEC)] relinquished, authority for the licensing and regulation of specified

radiological material [and activities] upon finding the State program adequate to protect public health and safety and compatible with the NRC's program to regulate such radiological material [and activities]. [List all of the materials and activities covered under the Agreement. If appropriate, list radiological materials and activities over which the NRC relinquished regulatory authority in subsequent amendments to the State's Agreement and specify the dates of the amendments.] The Agreement authorized the State of [insert name of State] to regulate these radiological materials [and activities] for the protection of public health and safety.

II

[This section should describe the relevant events, facts, violations, technical, or legal reasons that provide the substantive basis for issuing the Order.]

[The following example is sample text for a funding/staffing emergency situation.]

By [letter, email, or telephone call] dated [insert date], [the party that contacted the NRC] advised [the NRC party who was contacted] that the State would not be able to [fund and/or staff] the program for regulating radiological materials subject to the Agreement at a level consistent with the State's program, which the NRC previously found to be adequate to protect the public health and safety and compatible with the NRC's regulatory program. On [insert date], the NRC notified Governor [insert name] that the [funding and/or staffing] is inadequate and creates a danger that requires immediate action to protect the health or safety of persons within or outside the State. [Provide any appropriate additional information regarding the emergency situation.] [For instance, this paragraph could state the following. The State's proposal to have only [1 or 2] staff members implement [insert name of State's radiation control program] is inadequate to protect public health and safety. [Insert name of State] has approximately [insert number of relevant licensees]. The staffing level does not ensure adequate coverage for emergency calls if a staff member is out of the office. The proposed staffing level creates a danger that could directly result in exposure to an individual in excess of the basic radiation protection standards in 10 C.F.R. Part 20.]

The NRC has determined that an emergency situation exists in the State of [insert name of State] because of the State's failure [or inability] to take steps necessary to contain or eliminate the cause of the danger within a reasonable time. [Provide any additional information supporting the NRC's finding.] Therefore, the NRC finds that it is necessary to temporarily suspend [all or part] of the State's Section 274b. Agreement. On [insert date], the NRC notified the Governor of [State] of its intention to issue this temporary suspension Order.

[The following example is sample text for a natural or man-made disaster.]

On [insert date], a [insert type of disaster] occurred in [insert name of State]. The State declared that an emergency situation exists. On [insert date], the NRC notified Governor [insert name] that the emergency situation creates a danger that requires immediate action to protect the health or safety of persons within or outside the State. [Provide any appropriate additional information regarding the emergency situation.]

The NRC has determined that an emergency situation exists in the State of [insert name of State] because of the State's failure [or inability] to take steps necessary to contain or eliminate the cause of the danger within a reasonable time. [Provide any additional information supporting the NRC's finding.] [For instance, this paragraph could state the following. Currently, [insert name of State] cannot ensure protection of public health and safety. [Insert name of State] has approximately [insert number of relevant licensees]. Due to the nature of the emergency, [insert name of State] is unable to confirm the location and security of regulated radiological materials within the State, which creates a danger that could directly result in exposure to an individual in excess of the basic radiation protection standards in 10 C.F.R. Part 20. Therefore, the NRC finds that it is necessary to temporarily suspend [all or part] of the Agreement in order for the NRC to have regulatory authority to enter the State and confirm the location and security of the licensed material. The NRC has notified the Governor of [insert name of State] of its intention to issue this temporary suspension Order.

III

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

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

The NRC must be able to rely on [insert name of State]'s Agreement State program to adequately protect public health and safety. The facts and the circumstances enumerated in Section II of this Order, in the judgment of the NRC, created an emergency situation with respect to materials covered by the State's Section 274b. Agreement. Immediate action is necessary to protect public health and safety. The State of [insert name of State] has failed [or is unable] to take the steps necessary to contain or eliminate the cause of the danger to public health and safety. Therefore, protecting public health and safety requires that the Agreement [or portions identified] [or individual license] between the NRC and [insert name of State] be temporarily suspended and that the NRC reassert regulatory authority over [list specific radiological materials, activities or individual license that the NRC will regulate during the temporary suspension.] Furthermore, pursuant to Section 274j.(2) of the Act, the NRC finds that the public's health, safety, and interest require that this Order be immediately effective.

In order to allow a smooth transition, the NRC deems it essential to maintain continuity in the licensing and regulatory obligations of the [insert name of State] licensees whose licenses are being recognized by the NRC. Such continuity would be assured by keeping in effect on an interim basis all [insert name of State] licenses as currently issued, until such time as the State's Section 274b. Agreement is reinstated.

The NRC will issue an Order notifying [insert name of State] licensees that their licenses are being recognized by the NRC as currently issued. The Order will provide notice to the licensees that they are subject to 10 C.F.R. Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended," and 10 C.F.R. Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC." The Order will notify the licensee that they will be contacted by the NRC individually with respect to any NRC fees applicable to their activities. The licensees will also be ordered to comply with the following requirements:

1. The licensee shall comply with [insert name of State] law and conditions in their current license.
2. The licensee shall make all notifications, required under [insert name of State] law or by the conditions in its current license, to the State of [insert name of State] and to NRC Region [insert Region number]'s State Agreements Officer at [insert telephone number for the State Agreements Officer], until further notice.

IV

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

- A. [IDENTIFY PART OF AGREEMENT AFFECTED AND MATERIAL OR INDIVIDUAL LICENSE AFFECTED];

The NRC HEREBY ORDERS that all [or part] of the Section 274b. Agreement with [insert name of State] is temporarily suspended, and reasserts regulatory authority over the following radioactive materials [and activities or individual license]:

[The following is a list of radioactive materials and activities that may be covered in a Section 274b. Agreement. This section should include only those materials and activities over which the NRC is reasserting its regulatory authority through this temporary suspension.]

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(2) of the Act;
3. Byproduct material as defined in Section 11e.(3) and 11e.(4) of the Act;
4. Source material (uranium and thorium) as defined under Section 11z. of the Act;
5. Special nuclear material as defined under Section 11aa. of the Act in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons;
7. The 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, as provided for in NRC regulations or Orders.

B. [IDENTIFY WHAT ACTIONS (AND WHEN) THE STATE MUST DO TO ELIMINATE THE DANGER THAT WAS THE BASIS FOR THE TEMPORARY SUSPENSION];

[The following example is a sample paragraph for this section.]

The NRC HEREBY ORDERS that [insert name of State] must increase [funding/staffing] levels to [insert number] within 30 days, to ensure adequate protection of public health and safety. Failure to provide adequate [funding/staffing] within this time period will result in the NRC evaluating whether to permanently suspend or terminate the State's Section 274b. Agreement in order to protect public health and safety.

C. [IDENTIFY WHAT MUST HAPPEN TO REINSTATE THE AGREEMENT]

[The following example is a sample paragraph for this section.]

The NRC HEREBY ORDERS that in order to reinstate its Section 274b. Agreement, [insert name of State] must notify the NRC, and provide adequate documentation, that it has increased [funding/staffing] levels to [insert number] to ensure adequate protection of public health and safety. After determining that the State actions are adequate to protect health and safety and compatible with the NRC's regulatory program, the NRC will send a letter to the State indicating that the NRC has reinstated the State's Agreement.

D. [STATE LICENSES]

The NRC HEREBY ORDERS that all licenses and license amendments issued by [insert name of State], outstanding orders (if any), or other documents establishing obligations for specific licensees that are recognized by the NRC shall remain in full force and effect as if issued by the NRC during the temporary suspension.

FOR THE NUCLEAR REGULATORY COMMISSION

Executive Director for Operations

Dated this ____ day of _____, _____

Appendix B

Sample Order Temporarily Suspending 274b Agreement

~~UNITED STATES NUCLEAR REGULATORY COMMISSION~~

In the Matter of

~~[Name of State]~~

~~[Agreement State Program]~~

~~ORDER TEMPORARILY SUSPENDING 274b AGREEMENT~~

~~(EFFECTIVE IMMEDIATELY)~~

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

~~On [Date], the State of [Name] entered into an agreement (Agreement) with the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Section 274 of the Act of 1954, as amended (Act), 42 U.S.C. Section 2021. The Agreement discontinued the NRC's regulatory authority within the State of [Name] with respect to [byproduct material as defined in Section 11e.(1) of the Act (radioisotopes) and/or byproduct material as defined in Section 11e.(2) of the Act (mill tailings or wastes) and/or byproduct material as defined in Section 11e.(3) of the Act and/or byproduct material as defined in Section 11e.(4) of the Act and/or source material (uranium and thorium) and/or special nuclear material (uranium 233, uranium 235 and plutonium) in quantities not sufficient to form a critical mass and/or permanent disposal of low-level waste containing one or more of the materials stated above but not including mill tailings]. The Agreement authorized the State of [Name] to regulate these materials for the protection of public health and safety.~~

~~||~~

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

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

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

~~III~~

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

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

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

~~IV~~

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

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

~~B. [IDENTIFY WHAT ACTIONS THE STATE MUST DO TO COME INTO COMPLIANCE WITH COMMISSION REQUIREMENTS AND WHEN];~~

~~C. _____ [IDENTIFY WHAT MUST HAPPEN TO REINSTATE THE AGREEMENT].~~

~~FOR THE NUCLEAR REGULATORY COMMISSION~~

~~Executive Director for Operations~~

~~Dated at Rockville, Maryland this day of _____, [YEAR]~~

Appendix C

Sample Memorandum to the Commission Regarding the Emergency Suspension of All or Part of an Agreement

MEMORANDUM TO: Chairman [Name]
 Commissioner [Name]
 Commissioner [Name]
 Commissioner [Name]
 Commissioner [Name]

FROM: Executive Director for Operations

SUBJECT: ISSUANCE OF AN ORDER TO TEMPORARILY SUSPEND THE
 [STATE'S NAME] AGREEMENT

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

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

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

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

Enclosure:
Order to [State]
[Order to \[State\] licensees](#)

Appendix D
Sample Order Notifying Materials Licensees of Transfer of Regulatory Authority

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
[Insert name of State] RADIOACTIVE) EA-YY-XXXX
MATERIALS LICENSEES)
IDENTIFIED IN ATTACHMENT 2)

ORDER NOTIFYING [insert name of State] RADIOACTIVE MATERIALS LICENSEES
OF TRANSFER OF REGULATORY AUTHORITY
(EFFECTIVE IMMEDIATELY)

Pursuant to Section 274j.(2) of the Atomic Energy Act, as amended (AEA), 42 U.S.C. § 2021(j)(2), the U.S. Nuclear Regulatory Commission (NRC) has temporarily suspended its Agreement with the State of [insert name of State] that authorized the State to regulate [list the radiological materials and activities covered under the State’s Section 274b. Agreement over which the NRC is reasserting its regulatory authority]. As a result, the NRC is reasserting its regulatory authority over these radiological materials [add “and activities” if applicable], effective immediately. During this temporary suspension, the NRC will recognize the licenses issued by the State of [insert name of State] for these radiological materials as currently issued. The licensees identified in Attachment 2 to this Order all hold licenses issued by [insert name of State] in accordance with the State’s Section 274b. Agreement.

Inasmuch as NRC licensees are subject to 10 C.F.R. Part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended,” and 10 C.F.R. Part 171, “Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” this Order notifies the licensee that the NRC will individually contact the licensee regarding the extent to which these fee requirements are applicable to the licensee.

Accordingly, pursuant to Sections 161b., 161c., 161i., 161o., and 274 of the AEA, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 2 TO THIS ORDER SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

1. The licensee shall comply with [insert name of State] law and the conditions in its current license.
2. The licensee shall make all notifications, required under [insert name of State] law or by the conditions in its current license, to the State of [insert name of State] and to NRC

Region [insert Region number]'s State Agreements Officer at [insert telephone number for the State Agreements Officer], until further notice.

FOR THE NUCLEAR REGULATORY COMMISSION

Director, Office of Federal and State Materials and
Environmental Management Programs

Dated this ____ day of _____, _____

Attachments:

1. Order EA-YY-XXXX dated _____ [Order issued by the NRC to State].
2. List of Applicable [insert name of State] Radioactive Materials Licensees

Appendix ED

Sample Press Release

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

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

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

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

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

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

Appendix F E

Sample Congressional Letter on Emergency Suspension

[Appropriate Congressional Oversight Committee]

Dear Mr. Chairman:

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

Licenses in [State] are being advised of NRC's action in an Order dated [date]. The affected [State] licenses, as currently issued, will remain in effect under NRC's [regulatory](#) authority. We are also issuing a press release.

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

Sincerely,

Director
Office of Congressional Affairs

Enclosure:
Order to Temporarily Suspend
[Order to State Licensees](#)

Appendix G

F

Sample Letter to Affected Agreement State Licensees Regarding the Emergency Suspension

To [STATE] Licensees:

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

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

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

Sincerely,

Regional Administrator

Appendix H

Questions to be asked in the event of Continuity of Operations or Pandemic Plan Execution

The questions listed below are those that NRC anticipates asking of the Agreement States upon: (1) NRC notification to the Agreement States upon activation of NRC's Continuity of Operations (COOP)/Pandemic Response Plan, and (2) notification to NRC by an Agreement State upon activation of their State's COOP and/or Pandemic response plan:

1. Has the State Government or the Radiation Control Program activated its COOP or Pandemic Response Plan? If so, when? If not, will the State notify the NRC upon activation of its plan?
2. Who is the State COOP or Pandemic Response Plan point of contact for radiation protection issues? Please provide contact information and 24/7 number, if available.
3. Is the State currently able to conduct critical regulatory and radiation protection functions* with respect to radioactive material? (Has the State defined their critical functions?)
4. Does the State need or request NRC assistance at this time?
5. Is the State monitoring or has the State reached out Category 1 and 2 licensees to inquire and obtain assurances regarding the safety and security of licensed materials?
6. Are you currently aware of (or do you anticipate) any problems with continued local law enforcement agency (LLEA) response to support increased control of radioactive materials?
7. Are you currently aware of (or do you anticipate) any impacts to medical licensees' ability to perform procedures involving radioactive materials?
8. Are you currently aware of (or do you anticipate) any impact to the transportation and shipment of medical use radioactive materials?
9. Are you currently aware of (or do you anticipate) any other potential issues affecting health and safety or security of radioactive materials?

*NRC considers critical or essential functions as those functions that must be continued throughout, or resumed rapidly after, a disruption of normal activities, in order to maintain public health and safety. These are things such as incident assessment and response, reactive inspections for events, and emergency Orders or licensing actions that cannot be reduced or postponed. The NRC engaged in a process with the Federal government to define those functions according to federal standards [Federal Continuity Directive (FCD) 2, "Federal Executive Branch Mission Essential and Primary Mission Essential Function Identification and Submission Process," dated February 2008, issued by U.S. Department of Homeland Security (DHS)].

Appendix IG

Sample Notification of Lifting Suspension

Dear Governor [Name]:

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

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

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

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

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

Sincerely,

Executive Director for Operations

Appendix JH

Sample Press Release on Lifting Temporary Suspension

U.S. NUCLEAR REGULATORY COMMISSION IS LIFTING THE TEMPORARY EMERGENCY
SUSPENSION OF THE [STATE'S NAME] REGULATORY AUTHORITY

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

On [Date] the NRC issued an immediately effective Order dated [Date], to temporarily suspend [State] regulatory authority over [identify part of Agreement affected and material affected]. The action was taken in order to ensure that public health and safety would be protected. An emergency situation existed in [State] due to [facts requiring implementation of Section 274j.(2)]. Under Section 274 of the Atomic Energy Act of 1954, as amended, the NRC is authorized to temporarily suspend all or part of its Agreement with the State without notice or hearing if an emergency situation exists with respect to any material covered by such an Agreement creating danger which requires immediate action to protect the health and safety of persons, and the State has failed, or is unable, to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

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

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

Appendix **K**

Sample Congressional Letter on Lifting Temporary Suspension

[Appropriate Congressional Oversight Committees]

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

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

Sincerely,

Director
Office of Congressional Affairs

Appendix LJ

Sample Letter to Affected Agreement State Licensees on Lifting Temporary Suspension

To [STATE] Licensee:

The U.S. Nuclear Regulatory Commission (NRC) is terminating the temporary suspension of [State's Name] regulatory authority over [identify part of Agreement affected and material affected]. This action is effective on [Date].

The ~~NRC Commission~~ has determined that the emergency situation which necessitated NRC's action no longer exists. Therefore, the Agreement between the ~~NRC Commission~~ and [State] has been reinstated and your [affected State] license will remain in effect as it was issued prior to the temporary suspension.

If you have any questions or concerns regarding this action please contact [Appropriate Regional Contact].

Sincerely,

Regional Administrator

~~Appendix K~~

~~Questions to be asked in the event of Continuity of Operations or Pandemic Plan Execution~~

~~The questions listed below are those that NRC anticipates asking of the Agreement States upon: (1) NRC notification to the Agreement States upon activation of NRC's Continuity of Operations (COOP)/Pandemic Response Plan, and (2) notification to NRC by an Agreement State upon activation of their State's COOP and/or Pandemic response plan:~~

- ~~1. Has the State Government or the Radiation Control Program activated its COOP or Pandemic Response Plan? If so, when? If not, will the State notify the NRC upon activation of its plan?~~
- ~~2. Who is the State COOP or Pandemic Response Plan point of contact for radiation protection issues? Please provide contact information and 24/7 number, if available.~~
- ~~3. Is the State currently able to conduct critical regulatory and radiation protection functions* with respect to radioactive material? (Has the State defined their critical functions?)~~
- ~~4. Does the State need or request NRC assistance at this time?~~
- ~~5. Is the State monitoring or has the State reached out Category 1 and 2 licensees to inquire and obtain assurances regarding the safety and security of licensed materials?~~
- ~~6. Are you currently aware of (or do you anticipate) any problems with continued local law enforcement agency (LLEA) response to support increased control of radioactive materials?~~
- ~~7. Are you currently aware of (or do you anticipate) any impacts to medical licensees' ability to perform procedures involving radioactive materials?~~
- ~~8. Are you currently aware of (or do you anticipate) any impact to the transportation and shipment of medical use radioactive materials?~~
- ~~9. Are you currently aware of (or do you anticipate) any other potential issues affecting health and safety or security of radioactive materials?~~

~~*NRC considers critical or essential functions as those functions that must be continued throughout, or resumed rapidly after, a disruption of normal activities, in order to maintain public health and safety. These are things such as incident assessment and response, reactive inspections for events, and emergency Orders or licensing actions that cannot be reduced or postponed. The NRC engaged in a process with the Federal government to define those functions according to federal standards [Federal Continuity Directive (FCD) 2, "Federal Executive Branch Mission Essential and Primary Mission Essential Function Identification and Submission Process," dated February 2008, issued by U.S. Department of Homeland Security (DHS)].~~