



Office of Nuclear Material Safety and Safeguards Procedure Approval

Emergency Suspension of Section 274b. Agreement State Agreements (SA) Procedure SA-112

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Kevin Williams
Director, NMSS/MSST

A handwritten signature in black ink, appearing to read "K Williams", is positioned to the right of the name and title.

Signed by Williams, Kevin
on 04/19/21

Brian Anderson
Branch Chief, MSST/SALB

A handwritten signature in black ink, appearing to read "B. Anderson", is positioned to the right of the name and title.

Signed by Anderson, Brian
on 04/06/21

Joe O'Hara
Procedure Contact, MSST/SALB

A handwritten signature in black ink, appearing to read "J O'Hara", is positioned to the right of the name and title.

Signed by O'Hara, Joseph
on 04/01/21

ML21090A253

NOTE

Any changes to the procedure will be the responsibility of the NMSS Procedure Contact. Copies of NMSS procedures are available through the NRC Web site at <https://scp.nrc.gov>

I. INTRODUCTION

This procedure describes the process the U.S. Nuclear Regulatory Commission (NRC) will use to temporarily suspend an Agreement State's 274b. agreement with the NRC. This action will take place when an emergency exists requiring immediate action to protect public health, safety, and security as described in this procedure.

This procedure does not address the non-emergency situation in which there is no immediate danger to the public health, safety, and security. Guidelines for a non-emergency suspension are found in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-114, *Suspension of Section 274b. Agreement*. Guidelines for termination of an agreement are found in SA-115, *Termination of 274b Agreement*.

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 of 1954, as amended (Act).

III. BACKGROUND

A. Section 274j.(2) of the Act states: Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all, or part, of its agreement with the State without notice or hearing if, in the judgment of the Commission:

1. An emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State, and
2. 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 shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

B. Agreement materials are byproduct, source and special nuclear material not sufficient for a critical mass pursuant to paragraph (a) of Section 274 of the Act.

C. Single or isolated events should not be used as the basis for initiating the temporary emergency suspension of an agreement.

IV. ROLES AND RESPONSIBILITIES

A. The Executive Director for Operations (EDO) has the authority to issue an order to the State that would temporarily suspend all, or part, of the State's Section 274b. Agreement and of the NRC's reassertion of regulatory authority over the specified radiological materials and activities. The EDO is responsible for

notifying the Commission, in writing, detailing the nature of the emergency and the actions taken to contain or eliminate the danger.

- B. The Office of General Counsel (OGC) assists in the review and evaluation of orders and other actions taken to implement the NRC decisions to exercise the authority contained in Section 274j.(2) of the Act.
- C. The Director of the Office of Nuclear Materials, Safety and Safeguards (NMSS) is responsible for:
 - 1. Issuing an order to the State's licensees affected by the temporary suspension.
 - 2. Informing the State's licensees of the transfer of regulatory authority and recognizing all State licenses issued by the State.
 - 3. Taking the lead in the preparation and coordination of a Commission memorandum detailing the emergency suspension of the Agreement and informing the Management Review Board (MRB) of the decision.
 - 4. Coordinating all enforcement actions with the affected NRC Regional office and Office of Enforcement (OE).
 - 5. Approving, signing, and issuing non-escalated enforcement actions to licensees, and, after consultation with OE, signing and issuing non-escalated enforcement actions or letters to non-licensees.
 - 6. Signing and issuing Confirmatory Action Letters.
 - 7. Conducting enforcement panels, pre-decisional enforcement conferences, and enforcement caucuses.
- D. The Director of the Division of Materials Safety, Security, State, and Tribal Programs (MSST) is responsible for:
 - 1. Informing the NMSS Director when the NRC may invoke this procedure.
 - 2. Leading meetings with MSST, OGC, CFO, and NRC management.
 - 3. Preparing correspondence from the MSST staff to the Director of NMSS and the MRB.
 - 4. Supporting the licensing and inspection of the affected Agreement State with the affected NRC Regional office until the suspension is lifted.
- E. The Chief of the State Agreements and Liaison Programs Branch (SALB) in coordination with the respective Regional State Agreements Officer (RSAO) is responsible for the drafting of all follow-up suspension notifications, (e.g., to the Governor, and All Agreement and Non-Agreement States). SALB maintains sample notifications, orders, press releases, and letters on its state

communications portal public Web site (<https://scp.nrc.gov/>) or NRC's Agencywide Document Access Management System (ADAMS) [ML20307A373](#).

- F. The RSAOs are responsible for coordinating with the State so that all necessary information is gathered, and action is taken to notify all licensees from the Agreement State radiation control program. The RSAOs are responsible for informing the Director of MSST and the Chief of SALB if an Agreement State is experiencing any hardship that may render this procedure necessary.
- G. The Office of Public Affairs (OPA) is responsible for issuing a press release when the NRC plans to take action to suspend an agreement and when the suspension is lifted.
- H. The Office of Congressional Affairs (OCA) is responsible for notifying the Chairman, Committee on Environment and Public Works and Chairman, Committee on Energy and Commerce and the Congressional delegation from the affected State when the NRC plans to take action to suspend an agreement. OCA is also responsible for notifying the same organizations when the temporary suspension is lifted.
- I. The Office of the Chief Financial Officer (OCFO) will on a case-by-case basis decide in coordination with the OGC, NMSS, MSST and SALB, if fees will be collected pursuant to the requirements in Title 10 *Code of Federal Regulations* (CFR) Part(s) 170 and 171. If the decision is to collect fees, OCFO is responsible for the correspondence and collection of fees with licensees in the affected Agreement State.
- J. The appropriate NRC Regional management is responsible for:
 - 1. Gathering all the pertinent information from the State and action is taken to notify all State licensees.
 - 2. Licensing and inspecting of Agreement State licensees when a temporary suspension order has been executed.
 - 3. Initiating enforcement actions necessary to address an immediate threat to public health and safety.

V. GUIDANCE

- A. Criteria for a Temporary Emergency Suspension
 - 1. The NRC may suspend an Agreement, pursuant to Section 274j.(2), in the case of an emergency involving agreement material (byproduct, source, or special nuclear material), when:
 - a. An emergency exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State.

- b. 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.
 - c. An emergency exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside of the State.
 - d. 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.
2. The NRC will take into consideration the following when deciding to temporarily suspend an agreement or part of an agreement:
- a. The potential risk to the public or the environment based on the emergency.
 - b. The timeliness and adequacy of actions being taken by the State in response to the emergency.
 - c. Whether the State has the resources to resolve the emergency situation.
 - d. Whether the State is implementing, or is committed to implement, program improvements to address the cause of the emergency.
3. These conditions, if not appropriately addressed by the State to prevent the danger, are examples that could result in a consideration of emergency suspension:
- a. Conditions that caused, or could cause, individuals to receive a dose significantly in excess of the dose limits set forth in Subparts C and D in 10 CFR Part 20 or in other parts of 10 CFR that Agreement States must adopt under the Agreement State Program Policy Statement (e.g., 10 CFR Part 35 limits for patient release).
 - b. Conditions that cause agreement material to be left unsecured, and has caused, or has the potential to cause, imminent severe damage to the public health and safety, or to the environment if this material was used for malevolent actions (e.g., using these materials to create a radiological dispersal device or "dirty bomb");
 - c. Conditions that cause, or could cause, a significant regulatory gap in the National Materials Program in that a State's legislation, regulations, or other program elements may lead to immediate or imminent health and safety or compatibility consequences in other jurisdictions (e.g., lacking compatible transportation requirements);
 - d. Conditions that caused, or could cause, the disruption in regulatory oversight (e.g., 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) that impact the State's ability in the short term to protect public health and safety.

- e. In the event an Agreement State would need to execute its COOP or Pandemic Response Plan, the NRC will need to ascertain any regulatory, safety or security issues as the result of the COOP or Pandemic situation. The NRC anticipates asking the Agreement State the questions listed in RCPD Letter 09-015 which can be found in ADAMS at ML092740668 (non-public).

B. Initiation of a Temporary Emergency Suspension Action

- 1. If the RSAO becomes aware that the State's Governor will request a temporary suspension of all or part of its Agreement, the RSAO will immediately notify the affect NRC regional management, MSST and SALB management. The RSAO, SALB Branch Chief, MSST Director and NRC management will meet and discuss the next steps. The following actions may be required to be taken:
 - a. Events which may warrant consideration of emergency suspension, but for which there is a reasonable basis for presumption that the Agreement State will satisfactorily resolve the emergency situation, the Region in coordination with MSST will inform the State by telephone of necessary actions that the State should take and that an emergency suspension under Section 274j.(2) will not be issued.
 - i. The Chief of SALB will notify the Chair of the Organization of Agreement States (OAS). OAS may be able to provide additional assistance.
 - ii. The RSAO will provide daily updates to NRC regional management, the Director of MSST and the Chief of SALB on the status of the States actions.
 - b. If the discussion concludes that the State will request a temporary suspension, then:
 - i. The RSAO should advise the State to make the request directly to the EDO via telephone or other virtual communication technology (e.g., MS Teams or Webex), in coordination with the Director, NMSS during normal business hours, if available. The State should contact the NRC Headquarters Operations Center (HOC) at (301) 816-5100, at any time, to notify the EDO, RSAO, or NRC staff. The notification should include the specific nature of the emergency and its possible impacts on public health, safety, and security.
 - ii. The Director of MSST will inform the NMSS Director and the Chair of the Management Review Board.

- iii. The Chief of SALB will notify the Chair of the Organization of Agreement States (OAS). OAS may be able to provide additional assistance.
 - iv. The OCFO, OGC, and SALB will discuss the possibility of assessing fees under Part 170 and Part 171 to the NRC at this time, whether licensees may become subject to Part 170 and Part 171 fees to the NRC at a later date, or whether licensees must pay state fees during the temporary suspension. The order issued by NMSS to state licensees would include the decision on fees.
2. To implement a temporary emergency suspension in an efficient and effective manner, the State will need to provide the RSAO and NRC regional management of the affected Agreement State with the following information, at a minimum:
 - a. A list of licensees, the type and quantity of radioactive material they possess and locations of use;
 - b. A telephone, e-mail list and mailing address of licensees in order to notify them of the emergency suspension; and,
 - c. The status of any amendments or new applications with immediate health, safety, and security consequences.
3. If the State cannot provide this information prior to, or shortly after an emergency suspension, the NRC will use the National Source Tracking System (NSTS) and the Integrated Source Management Portfolio (ISMP) to identify and locate the licensees with risk-significant radioactive materials.
4. The EDO should provide advance notice to the Commission of the intent to issue an order provided that the circumstances prompting the action allow sufficient time to give the Commission advance notice without endangering public health and safety.
5. The EDO will issue an order to the State that would temporarily suspend all or part, of the State's Section 274b Agreement and of the NRC's reassertion of regulatory authority over the specified radiological materials and activities.
6. The Office Director of NMSS will issue an order to the States licensees affected by the temporary suspension to inform the States licensees of the transfer of regulatory authority, and to recognize all State licenses issued by the State.
7. The NRC Regional staff will assist licensing reviews and inspections for the Agreement State until the temporary suspension is lifted.
8. NMSS will initiate only enforcement actions that are necessary to address an immediate threat to public health and safety for the Agreement State licensees. If violations found during the temporary suspension do not require immediate action or the State resumes authority before the enforcement

actions are completed, then the NRC should discuss with the State authorities whether the State should complete the appropriate enforcement action.

9. Emergency suspension is a short-term solution to an urgent problem. If the emergency suspension will continue for an indefinite period, the NRC will initiate steps for a full suspension or termination of the 274b. Agreement (see NMSS Procedure SA-114, *Suspension of Section 274b. Agreement*, and NMSS Procedure SA-115, *Termination of a Section 274b. Agreement*).
10. Sample notifications, orders, press releases, and letters can be found of the State Communications Portal public Web site or ADAMS [ML20307A373](#).

C. Withdrawal of a Temporary Emergency Suspension

1. When the State informs the RSAO that the emergency has been contained, the RSAO will request a meeting with NRC Regional management, SALB Branch Chief, MSST Director. If the NRC agrees the temporary suspension can be lifted, the following actions will take place:
 - a. The SALB staff, in coordination with OGC, will draft an Order for the EDO to sign lifting the suspension. The Order will recognize the emergency situation has been contained or eliminated. This Order will be sent to the Governor of the State and will indicate that the emergency suspension is no longer in effect;
 - b. The Director of NMSS will rescind the order and in coordination with the appropriate NRC Region, notify the State's licensees that the temporary suspension is no longer in effect;
 - c. The appropriate NRC Region and RSAO will meet with the Agreement State to provide a turnover of work activities (e.g., licensing actions, inspections, and enforcement);
 - d. The Chief of SALB is responsible for notifying the Chairman of the OAS;
 - e. OPA is responsible for issuing a press release; and
 - f. OCA is responsible for notifying Congressional committees and the congressional delegation for the affected State.

D. Evaluation of the Agreement State Radiation Control Program Following a Temporary Suspension

1. The Director of NMSS, in coordination with NRC Regional management, the RSAO, SALB, and MSST management, will meet with the Agreement State management to discuss the current status of State program and actions taken by the State to prevent another emergency.
2. If the NMSS Director does not have reasonable assurance that the State's Agreement Program has not taken sufficient actions to prevent another

emergency or upon the Agreement State's request, a meeting with the MRB should take place. The MRB meeting should be scheduled within 60 – 90 days from the lifting of the temporary suspension to discuss and evaluate the Agreement State's current program status. Based on the discussion between the State, NMSS, and NRC Regional management, the MRB will consider whether it may be necessary to change the date of the next IMPEP review, periodic meeting or place the State on enhanced monitoring (see NMSS Procedure SA-106, *The Management Review Board* and NMSS Procedure SA-122, *Heightened Oversight and Monitoring*).

VI. REFERENCES

NMSS SA Procedures are available at: <https://scp.nrc.gov/procedures.html>

Sample notifications, orders, press releases and letters are available at: <https://scp.nrc.gov/>

VII. 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	11/5/06	Memorandum from Luis Reyes, EDO, to Charlie Miller, FSME, Delegation of Authority	ML063030369
3	5/7/08	Memorandum from Cynthia Carpenter, OE to Charlie Miller, FSME, Delegation of Authority for Enforcement Actions	ML080850267
4	2/22/07	FSME-07-020, Opportunity to Comment on Draft Revisions to FSME Procedure SA-112	ML070570341
5	2/22/07	FSME Procedure SA-112, Draft Revision	ML070570359
6	9/25/07	FSME-07-089, Final FSME Procedure SA-112	ML072700496
7	9/25/07	FSME Procedure SA-112	ML072510003
8	9/25/07	Redline/Strikeout Copy	ML072510004
9	9/25/07	Resolution of Comments	ML072610485
10	10/2/09	RCPD Letter 09-015; Anticipated Questions during a COOP or Pandemic Plan Response involving an Agreement State Program	ML092740668 (non-public)
11	11/08/10	FSME-10-093, Opportunity to Comment on Draft Revisions to FSME Procedures SA-112 and SA-114	ML103070271

No.	Date	Document Title/Description	Accession Number
12	3/9/12	Memorandum to Duncan White from Bradley Jones Subj.: Recommended Changes to Agency Guidance SA-112, "Emergency Suspension of Section 274b Agreement"	ML20274A049
13	11/2/20	Sample notifications, orders, press releases and letters	ML20307A373
14	12/4/20	STC-20-080, Opportunity to Comment on Draft Revisions to NMSS SA Procedure SA-112	ML20090A371
15	4/19/21	NMSS SA-112 Emergency Suspension	ML20090A370