



Office of Nuclear Material Safety and Safeguards State Procedure Approval

Placing an Agreement State Program on Probation

SA-113

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NOTE

**Any changes to the procedure will be the responsibility of the NMSS Procedure Contact.
Copies of the state procedures will be available through the NRC Web site.**

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I. INTRODUCTION

This procedure describes the process used by the U.S. Nuclear Regulatory Commission (NRC) when placing an Agreement State¹ program on probation.

II. OBJECTIVES

- A. To set forth the guidelines that will be followed by NRC when considering whether to exercise the authority contained in Section 274j. of the Atomic Energy Act (Act), as amended, to place an Agreement State program on probation.
- B. To set forth the process NRC will be using to ensure that progress is being made to improve performance of the program in the areas identified as needing improvement without degradation of other parts of the Agreement State's radiation control program.
- C. To ensure an Agreement State on probation understands the process, its role, and any actions expected of the program.
- D. To describe how the NRC will monitor the progress of an Agreement State in restoring the radiation control program's performance to the "satisfactory" criteria identified in Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.

III. BACKGROUND

- A. Section 274j. of the Act gives the Commission authority and responsibility for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with NRC's program. In cases where the Commission finds that program weaknesses exist regarding the adequacy and/or compatibility of an Agreement State's program, yet the weaknesses are not so serious as to find the program inadequate to protect public health and safety, one of the options available to ensure continued protection of public health and safety is to place the Agreement State on probation. Probation is also an option when an Agreement State on Heightened Oversight has not addressed program weaknesses identified in previous reviews during the period of Heightened Oversight (see FSME² Procedure SA-122, *Heightened*

¹ As used in this procedure, State means a "State" or "Commonwealth." Staff should use the term that is correct for the State or Commonwealth being addressed.

² Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with NMSS on October 6, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. In the interim, current procedures are in effect and will be referenced as State Procedures until such time as they are reviewed and revised to include the official office name. All procedures may be found on the NMSS external Web site: www.nrc.gov > About NRC > Organization and Functions > Office of Nuclear Material Safety and Safeguards. Under Related Information, go to the "Agreement State Program." The State Procedures are under "Resources and

Oversight and Monitoring, for details on Heightened Oversight).

- B. The Commission Policy Statement, 'Statement of Principles and Policy for the Agreement State Program,' established the option of placing an Agreement State program on probation for program weaknesses regarding the adequacy and/or compatibility of an Agreement State program.

IV. ROLES AND RESPONSIBILITIES

A. Management Review Board (MRB):

- 1. Considers the results of Agreement State reviews under the Integrated Materials Performance Evaluation Program (IMPEP) and recommends to the Executive Director of Operations (EDO) that an Agreement State be placed on probation when program weaknesses regarding the adequacy and/or compatibility of the program are identified during an IMPEP review.
- 2. For Agreement States on probation, reviews State's Performance Improvement Plan.
 - a. Sends a letter from the Chair of the MRB to the Agreement State acknowledging receipt and approval/disapproval of the Plan. The letter will also include any comments from the review of the Plan.
- 3. Recommends to the EDO that the probationary status of an Agreement State program be lifted/removed.
- 4. Evaluates special reviews of Agreement State programs conducted to assess a specific program weakness or weaknesses identified during periodic meetings or other interactions with Agreement State programs and determines whether the Agreement State program be placed on probation.
- 5. Considers improvements made by an Agreement State program and the resolution of action items from the Agreement State's Program Improvement Plan to determine if a recommendation should be made to the EDO to lift the probationary status.
- 6. Evaluates the adequacy of an Agreement State's actions during a period of Heightened Oversight. If a programmatic weakness or weaknesses continue uncorrected throughout the period of Heightened Oversight, the MRB may

recommend to the EDO that the Agreement State program be placed on probation.

B. The Executive Director for Operations (EDO):

1. Informs the Commission of any decision to initiate proceedings to place the Agreement State program on probation and the results of the MRB.
2. The EDO signs the letter to the governor of the State containing the staff's recommendation and basis. The EDO should contact the State's governor to discuss the letter before it is mailed.

C. Director, Division of Materials Safety, State, Tribal and Rulemaking (MSTR):

1. Coordinates and reviews all probation notifications (i.e., to the governor, to the Agreement State's U.S. Congressional delegation, to the appropriate Congressional committees, to the *Federal Register*, to all of the Agreement State's licensees, and to all Agreement and Non-Agreement States).
2. Coordinates and reviews all notifications to lift the probationary status of an Agreement State program (i.e., to the governor, to the Agreement State's U.S. Congressional delegation, to the appropriate Congressional committees, to the *Federal Register*, to all of the Agreement State's licensees, and to all Agreement and Non-Agreement States).
3. Coordinates the review of the Agreement State's Program Improvement Plan.
4. Coordinates follow-up IMPEP reviews of Agreement State programs on probation.

D. Regional State Agreements Officer (RSAO):

1. Leads and coordinates probation activities with the Office of Nuclear Material Safety and Safeguards (NMSS)/MSTR Agreement State program management, IMPEP Coordinator or designee, and other applicable NRC staff.
2. Reviews and comments on the Program Improvement Plan submitted by an Agreement State on probation.
3. Coordinates and prepares minutes of all probation-related conference calls, and coordinates the minutes with the NMSS/MSTR Agreement State program management, IMPEP Coordinator or designee, and other applicable NRC staff to ensure a clear understanding of discussions was recorded.
4. Participates, as a team member, on follow-up IMPEP reviews.

E. NMSS/MSTR IMPEP Coordinator or designee:

1. Prepares, for MSTR Division Director review, notifications of the probationary status of the Agreement State program to:
 - a. Agreement State's governor (see Appendix A for a sample Letter to the Governor of [State] Probation),
 - b. Members of the Agreement State's U.S. Congressional delegation,
 - c. Appropriate Congressional Committees,
 - d. Press Release,
 - e. *Federal Register Notice* (see Appendix B for sample *Notice*)
 - f. All of the Agreement State's licensees, and
 - g. All Agreement and Non-Agreement States.
2. Provides and coordinates with NRC's Office of Congressional Affairs to notify members of the Agreement State's Congressional delegation and Appropriate Congressional committees of the Agreement State's probation.
3. Coordinates with NRC's Office of Public Affairs to issue a press release on the Agreement State's probation
4. Reviews and comments on the Program Improvement Plan submitted by the Agreement State on probation.
5. Participates, in coordination with the RSAO, in probation activities including conference calls with the State, and reviews and comments on minutes of probation conference calls.
6. Prepares, for MSTR Division Director review, notifications of the lifting of the probationary status of an Agreement State program to:
 - a. Agreement State's governor,
 - b. Members of the Agreement State's U.S. Congressional delegation,
 - c. Appropriate Congressional Committees,
 - d. Press Release,
 - e. *Federal Register Notice* (see Appendix B for sample *Notice*)
 - f. All of the Agreement State's licensees, and
 - g. All Agreement and Non-Agreement States.
7. Provides and coordinates with NRC's Office of Congressional Affairs to notify members of the Agreement State's Congressional delegation and Appropriate Congressional committees on the lifting of the Agreement State's probation.

8. Provides and coordinates with NRC's Office of Public Affairs to issue a press release on the lifting of Agreement State's probation.

V. GUIDANCE

A. Process for Considering Probation

1. If the MRB identifies program weaknesses regarding the adequacy and/or compatibility of the Agreement State's program, but does not consider the weaknesses so serious as to find the program inadequate to protect public health and safety, one of the options available to ensure continued protection of public health and safety is to recommend to the EDO that the Agreement State program be placed on probation.
2. The MRB may decide to recommend placing an Agreement State program on probation based on the results of an IMPEP review, special review, or other interaction with the State. Major programmatic changes or evidence of poor program performance identified during a periodic meeting or other interaction with an Agreement State program may warrant the need for a special review to be conducted. A loss of key State personnel, a shift in resources to address specific State priorities, a pattern of weak State responses to events, or deliberate misconduct on the part of a State official could be factors in determining the need for a special review.
3. If the MRB determines probationary status is warranted, a meeting, with senior State officials and other applicable NRC staff (RSAO, MSTR IMPEP Coordinator), to discuss NRC concerns may be scheduled before declaring probationary status.
4. If the MRB recommends the Agreement State program be placed on probation, a letter for the EDO's signature that contains the status of the Agreement State program, the MRB's recommendation, and any other pertinent information will be prepared by MSTR.

B. Details of the Criteria for Probation

The MRB may consider placing an Agreement State Program on probation when any of the following circumstances are observed:

1. When one or more of the common and non-common performance indicators are found unsatisfactory during an IMPEP review and are of such safety significance that assurance of the program's ability to protect public health and safety may be degraded so that increased oversight by NRC is required to ensure program

improvements.

2. When programmatic weaknesses have gone uncorrected for a significant period of time and NRC is not confident of the Agreement State's ability to correct such weaknesses in an expeditious and effective manner without increased oversight by NRC.
3. When a program has repeatedly been late in adopting required compatibility elements and increased oversight by NRC would yield improvements.
4. When a program has remained on Heightened Oversight for a significant period of time and the results of an IMPEP review or other interaction with the Agreement State reveal that there has been little progress in achieving milestones identified in the State's Program Improvement Plan or addressing recommendations made during previous IMPEP reviews.

C. Elements of Probation

1. Agreement State Program Improvement Plan

- a. The Agreement State's Program Improvement Plan must include actions to address the recommendations in the final IMPEP report. It must fully discuss root causes for weaknesses and include short- and long-term corrective actions that target the identified root causes. The Program Improvement Plan must contain projected dates for completion of corrective actions, detail the products to be developed or implemented, and indicate the person(s) responsible for each product. The Program Improvement Plan will be reviewed by the responsible RSAO and the NMSS/MSTR IMPEP Coordinator or Designee. Preliminary review results will be discussed at the first probation conference call with the State. (See Appendix B of NMSS Procedure SA-122, *Heightened Oversight and Monitoring*, for an example of a Program Improvement Plan.)
- b. NRC and the Agreement State program managers may meet to discuss the Program Improvement Plan and any comments they may have. The managers should agree with the schedule of corrective actions. This meeting may determine the projected duration of the probationary period. Normally, the probationary period will be 1 year or less, but may be extended based on the specific circumstances.

2. Periodic progress reports.

The reports should be brief, concise summaries of the status of State actions and include an updated Program Improvement Plan. The report and updated Program Improvement Plan should be sent to the RSAO approximately 2 weeks before the

next scheduled conference call.

3. Periodic NRC/Agreement State probation conference calls.
 - a. These calls are designed to maintain open communications between the Agreement State and NRC. The calls will involve Agreement State managers responsible for improving the program, the IMPEP team leader, the MSTR IMPEP Coordinator or designee, the RSAO, and other NRC or State staff, as needed.
 - b. The probation conference calls normally will occur at least bimonthly, unless directed otherwise by the MRB.
4. Follow-up IMPEP review
 - a. The MRB will determine when a follow-up IMPEP review will be performed to evaluate State progress in resolving weaknesses. Normally, the follow-up review will occur 1 year after the original review that commenced the probationary period. (See NMSS Procedure SA-119 for additional information on follow-up reviews.)
 - b. The MRB may choose to recommend to the Commission that probation or any further action against the Agreement State be discontinued. The basis for continuation or discontinuation of probation could be based on the factors listed below:
 - i. The MRB should recommend discontinuation of the probationary period if the MRB finds the Agreement State program is satisfactory for all performance indicators. Based on the results of the follow-up IMPEP review and the information obtained during the MRB meeting, the MRB should determine if additional oversight of a lesser degree, such as Heightened Oversight or Monitoring, is necessary to ensure the Agreement State program continues to improve.
 - ii. If the MRB finds the Agreement State program is improving and is implementing the recommendations from the last IMPEP review; and the program is still found satisfactory, but needs improvement, for one or more performance indicators, the MRB should recommend discontinuation of the probationary period and the Agreement State program be placed on Heightened Oversight or Monitoring.
 - iii. If the MRB finds the Agreement State program is not improving or resolving the recommendations from the last IMPEP review in a timely manner and the program is found unsatisfactory for one or more performance indicators, the

MRB may elect to recommend continuation of the probationary period or may direct MSTR to prepare a Commission paper requesting approval for an appropriate next action, which may include suspension or termination of the Agreement (see NMSS Procedure SA-114, *Suspension of a Section 274b. Agreement* and NMSS Procedure SA-115, *Termination of a Section 274b. Agreement*).

E. Additional Actions for Programs on Probation

1. NRC/Agreement State management meetings

NRC may offer to meet with Agreement State officials to discuss State actions to improve the radiation control program.

2. NRC technical assistance

NRC and the Agreement State may discuss NRC technical assistance in accordance with the guidance in NRC Management Directive 5.7, *Technical Assistance to Agreement States*.

F. Discontinuation of Probationary Status

1. Once all actions in the State's Program Improvement Plan have been completed and deemed closed based on the results of a follow-up IMPEP review of the Agreement State's actions, the MRB may convene to review improvements and may consider recommending to the EDO that the probationary status be discontinued. The MRB may find it more beneficial to hold the discussion of the completed actions at the same time it meets to discuss the follow-up review.
2. If the MRB determines that the Agreement State has fulfilled the commitments in its Program Improvement Plan and the MRB is satisfied with the performance of the Agreement State program based on the results of an IMPEP review, the MRB should recommend to the EDO that the probationary status be lifted.
3. In the event that the Agreement State does not complete the actions identified in its Program Improvement Plan within a reasonable time period and extenuating circumstances do not exist, the MRB should consider whether the Agreement should be suspended or terminated (See the process and guidelines in NMSS Procedure SA-114, *Suspension of a Section 274b. Agreement* or NMSS Procedure SA-115, *Termination of a Section 274b. Agreement* will be followed.)
4. MSTR will be assigned the lead for preparation and coordination of the letter, for the EDO's signature, containing the MRB's recommendation. The letter will include the current status of the Agreement State program, the recommendation of the MRB,

and any other pertinent information supporting the MRB's decision. The letter will be coordinated with the Region in which the Agreement State is located.

5. If the EDO approves lifting the probationary status, notification of such change will be made following the same process outlined in Section V.C.1-4 above.
6. If the EDO approves further action against the Agreement State, the process and guidelines in NMSS Procedure SA-114, *Suspension of a Section 274b. Agreement* or NMSS Procedure SA-115, *Termination of a Section 274b. Agreement* will be followed.

VI. APPENDIXES

Appendix A - Sample Letter to the Governor of [State] Probation

Appendix B - Sample *Federal Register* Notice

VII. REFERENCES

1. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.
2. NRC Management Directive 5.7, *Technical Assistance to Agreement States*.
3. *Statement of Principles and Policy for the Agreement State Program*, dated September 3, 1997.
4. NMSS Procedure SA-106, *The Management Review Board*.
5. NMSS Procedure SA-114, *Suspension of a Section 274b. Agreement*.
6. NMSS Procedure SA-115, *Termination of a Section 274b. Agreement*.
7. NMSS Procedure SA-119, *Follow-up IMPEP Reviews*.
8. NMSS Procedure SA-122, *Heightened Oversight and Monitoring*.

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 NRC's Agencywide Documents Access and Management System (ADAMS) are listed below.

No.	Date	Document Title/Description	Accession Number
1	11/24/00	STP Procedure SA-113	ML010180096
2	7/15/05	STP-05-054, Opportunity to Comment on Draft Revision to STP Procedure SA-113	ML051990496
3	5/16/06	STP-06-046, Final STP Procedure SA-113	ML061380780
4	5/16/06	STP Procedure SA-113	ML061430106

No.	Date	Document Title/Description	Accession Number
5	5/16/06	STP Procedure SA-113 (redline/strikeout)	ML061430118
6	5/16/06	Summary of Comments on SA-113	ML061430123
7	7/23/09	FSME-09-058, Opportunity to Comment on Draft Revisions to FSME Procedures SA-113 and SA-122	ML091910356

Appendix A

Sample Letter to the Governor of [State] Probation

Dear Governor [Name]:

As you may be aware, under Section 274 of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission (NRC) retains the authority and responsibility for ensuring that Agreement State programs continue to provide adequate protection of public health and safety, and that they are compatible with NRC's program for regulating radioactive materials. The NRC may place an Agreement State program on probation if the NRC is not confident that the State can address program weaknesses in an expeditious and effective manner without increased oversight by NRC.

The last review of the [State] radiation control program found program weaknesses related to the adequacy and/or compatibility of your Agreement State program. Correction of these weaknesses is necessary to provide adequate protection of public health and safety in [State]. The NRC has further determined that while making the necessary corrections, the [State] program would benefit from increased NRC oversight. The NRC is, therefore, placing the [State] radiation control program on probation. Staff from the [State] radiation control program have been involved in the discussions leading to this decision.

The [State] radiation control program staff will be requested to provide NRC staff a "Program Improvement Plan" describing actions to be taken to address the identified weaknesses, including specific goals and timetables. NRC staff will work with your staff throughout the probationary period. Normally, the probationary period is approximately one year, but it could be extended based on extenuating circumstances. Once the NRC determines that the commitments in the "Program Improvement Plan" have been met and that the radiation control program has demonstrated significant improvements in program performance, the probationary status will be lifted.

I will be happy to answer any questions you may have, or your staff may contact [Name], Director, Office of Nuclear Material Safety and Safeguards, at [telephone number].

Sincerely,

Executive Director for Operations
cc: [SLO]
[RCPD]

Appendix B

Sample *Federal Register* Notice

Placement of State Radiation Control Program on Probation

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

ACTION: Notice of State Radiation Control Program Being Placed on Probation

SUMMARY:

NRC is announcing the placement of the [State] radiation control program for regulation of certain Atomic Energy Act materials on probation and is initiating increased NRC oversight of the program. The NRC is overseeing implementation of a "Program Improvement Plan" developed by the staff of the [State] radiation control program. Once the radiation control program has met the commitments made in the "Program Improvement Plan," and has demonstrated significant improvements in program performance, the probationary status will be lifted. There will be further announcements of that action.

FOR FURTHER INFORMATION CONTACT:

[Contact], Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number].

SUPPLEMENTARY INFORMATION:

Agreement States are States which have assumed regulatory authority from NRC over the possession and use of certain radioactive materials. Under Section 274 of the Atomic Energy Act, as amended, the Commission retains the authority and the responsibility to assure that Agreement State programs continue to provide adequate protection of public health and safety, and to be compatible with NRC's program with respect to the regulation of the materials and uses authorized under the Agreement. The Commission Policy Statement, "Statement of Principles and Policy for the Agreement State Program," established the option of placing an Agreement State radiation control program on probation for program weaknesses that require increased NRC oversight.

The Commission, through its Management Review Board (MRB), 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 place the program on probation. [Narrative of the MRB findings].

The State has been requested to develop a "Program Improvement Plan" and submit it to the NRC within 30 days. The plan should describe actions that will be taken by the State to address weaknesses, including specific goals and milestones. The Commission expects that the probationary period will be one year or less, but could be extended based on extenuating circumstances.

Once the MRB determines that the Agreement State has met the commitments in the "Program Improvement Plan" and has demonstrated significant improvements in program performance, a recommendation will be made to the NRC Executive Director for Operations that the probationary status be lifted. Upon Commission approval, the probationary status will be lifted. Notification of discontinuance of probation will be made to the Agreement State's Governor, the Agreement State's Congressional delegation, and all other Agreement and Non-Agreement States. NRC will also publish a *Federal Register* Notice and a press release announcing the discontinuance of probation for [State].