



# Office of Nuclear Material Safety and Safeguards Procedure Approval

## *The Management Review Board*

### **SA-106**

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Issue Date:

Review Date:

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Daniel S. Collins, Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs

**Date:**

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Paul Michalak, Chief  
Agreement State Program Branch  
Division of Material Safety, State, Tribal,  
and Rulemaking Programs

**Date:**

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Karen N. Meyer, Procedure Contact  
Agreement State Program Branch  
Division of Material Safety, State, Tribal,  
and Rulemaking Programs

**Date:**

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<b>NOTE</b>
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**Any changes to the procedure will be the responsibility of the Procedure Contact. Copies of the Office of Nuclear Material Safety and Safeguards procedures will be available through the U.S. Nuclear Regulatory Commission website.**

**I. INTRODUCTION**

In accordance with Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, the U.S. Nuclear Regulatory Commission (NRC) periodically evaluates NRC Regional and Agreement State radioactive materials programs in an integrated manner, using common and non-common performance indicators, to ensure that public health and safety are adequately protected and that Agreement State programs are compatible with the NRC's program. The Management Review Board (MRB) provides a senior-level review of the IMPEP team's findings and recommendations and issues the final NRC findings to the Region or Agreement State. For Agreement States, these findings can include decisions regarding monitoring, heightened oversight, probation, suspension, or the revocation of some or all aspects of the regulatory program's authority discontinued by the NRC and assumed by the Agreement State. These discussions can also include an Agreement State's decision to voluntarily return assumed regulatory authority back to the NRC (i.e., sealed source and device review program).

**II. OBJECTIVES**

- A. To provide guidance that will be followed by the MRB when conducting MRB meetings for IMPEP reviews and issuing findings for the NRC Regional and Agreement State radioactive materials programs.
- B. To establish the means to keep the MRB and the Commission informed of the status of the NRC Regional and Agreement State radioactive materials programs in a timely fashion.
- C. To provide guidance that will be followed by the MRB when considering the issuance of a letter of support.

**III. BACKGROUND**

The MRB is composed of the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs; the General Counsel; the Director, Office of Nuclear Material Safety and Safeguards; a Regional Administrator from an NRC Regional Office; and an Agreement State Liaison to the MRB.

**IV. ROLES AND RESPONSIBILITIES****A. Management Review Board (MRB):**

1. Makes the overall assessment of each NRC Region and Agreement State radioactive materials program;
  - a. Determines the adequacy of the NRC Regional radioactive materials programs.
  - b. Determines the adequacy and compatibility of Agreement State radioactive materials programs.
  - c. The MRB's overall assessment may include a consideration of the IMPEP review team's recommendations in the proposed final report, any information provided by the NRC Region or Agreement State at the MRB meeting, and insights provided by the Agreement State Liaison, other NRC Offices, or members of the public. Such information could include concerns regarding program decline, inability to retain and/or recruit staff, or inadequate resources for ensuring adequate protection of public health and safety.
2. Establishes precedents and significant changes to the IMPEP process;
3. Convenes to evaluate special reviews conducted to assess a specific program weakness, to consider the results of periodic meetings with Agreement States, or to discuss any other relevant issues, such as the results of conference calls with States under heightened oversight or monitoring;
4. Directs the issuance of letters of support to Agreement States; and,
5. Shall not convene a meeting unless all of the voting members consist of senior level management holding the title of Deputy Division Director or higher.

**B. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital Programs (DEDM):**

1. Chairs the MRB.
2. Designates a member of the MRB to act as the Chair in instances when attendance is not possible.
3. Signs outgoing correspondence resulting from MRB proceedings.

**C. Director, Office of Nuclear Material Safety and Safeguards (NMSS):**

1. Participates as a voting member on the MRB.

2. Designates an alternate NMSS representative in instances when attendance is not possible.
- D. Office of General Counsel (OGC):
1. Participates as a voting member on the MRB.
  2. Designates an alternate OGC representative in instances when attendance is not possible.
- E. Regional Administrator, NRC Regions:
1. Participates as a voting member on the MRB.
  2. Designates an alternate Regional representative in instances when attendance is not possible. Designee should not be lower than the Regional Division of Nuclear Materials and Safety Director/Deputy Director.
- F. Agreement State Liaison:
- Acts as a non-voting member of the MRB that provides an objective perspective on any matter that is discussed or voted on by the MRB, based on experience gained from working for an Agreement State program. In addition, the Agreement State Liaison should be at the program management level or higher and/or currently serving on the Organization of Agreement States (OAS) Executive Board.
- G. IMPEP Project Manager:
1. Provides all relevant correspondence (i.e., proposed final reports, responses to draft reports, organization charts, briefing bullets, and meeting agendas) to the MRB, the review team, and other attendees at least 7 days in advance of the meeting.
  2. Provides introduction and purpose of the MRB meeting and turns the meeting over to the MRB Chair.
  3. Reviews and issues minutes of MRB meetings or designates an alternate.
    - a. The minutes should summarize major discussions, but should not be a verbatim account of the proceedings. Transcription or recording services can be used if directed.
    - b. Underlying causes for program performance issues, precedents established by the MRB, and good practices should be clearly documented in the minutes.
  4. Documents in a memorandum to the permanent members of the MRB (DEDM; General Counsel; and Director, NMSS) any deviations or requests for deviation from prior MRB direction. Examples of deviations that will be documented include changes to frequency of heightened oversight or monitoring conference calls and extensions of intervals between IMPEP

reviews. Significant deviations, such as reducing the interval between IMPEP reviews due to a performance weakness identified outside of an IMPEP review or periodic meeting, will be presented to the MRB for concurrence during a special meeting.

5. Prepares the annual memorandum to the Commission featuring a report on the status of Agreement States' and Regions' radioactive materials programs. The memorandum should include the following attachments: (1) Summary of Agreement States' Adequacy and Compatibility Statuses as of January of the year issued, (2) Summary of the NRC Programs' Adequacy Statuses, (3) Summary of IMPEP Report Issuance Against the 104-day Goal, and (4) Summary of Activities Related to States on Heightened Oversight and Monitoring.

## **V. GUIDANCE**

### **A. Meeting Schedule**

MRB meetings are to be conducted approximately 74 (but no later than 90 days) days from the last day of the IMPEP review. Although these meetings are exempt from the "Commission Policy Statement on Staff Meetings Open to the Public," the public is invited to observe each meeting. Each meeting will be published in the weekly notice of "NRC Meetings Open to the Public." MRB meetings may take place beyond the 89th day in order to assemble a quorum, to accommodate Agreement State/Regional schedules, and/or to incorporate important supplemental material. Special MRB meetings to discuss the results of periodic meetings with Agreement States will be scheduled on an as needed basis or at a frequency established by the MRB.

### **B. Membership**

1. The MRB membership consists of four senior NRC managers, or their designees, representing the DEDM; OGC; NMSS; and an NRC Region.
2. The Regional representative on the MRB is a rotating position. Regional Administrators or their designees should be invited to participate on a particular MRB based on the following criteria:
  - a. For Agreement State reviews, the invited Regional participant generally should not be from the Region in which the State is geographically located; and
  - b. For Regional reviews, the invited Regional participant should not be from the Region under review.
3. The OAS is responsible for appointing a representative to serve as an Agreement State Liaison to the MRB. The Agreement State Liaison will be consulted for the Agreement State perspective on certain issues, may request additional information from the program under review during the meeting, and may be asked for their opinion in the review team's findings and

recommendations. The Agreement State Liaison does not have voting privileges, but may be asked to provide insight to the MRB's deliberation of the review team's findings and recommendations or if he or she agrees with the review team's conclusions. The Agreement State Liaison will be provided all relevant documentation provided to the MRB in advance of the meeting.

4. The MRB may request additional non-voting members (either NRC or Agreement State) to participate on the MRB as subject matter experts to address concerns relative to a specific aspect of a program. For example, the MRB may request a representative from a State with authority to regulate low-level radioactive waste to participate on the MRB if the proposed final report indicates that the program under review has a performance concern with respect to low-level waste.

C. Meeting Protocols

1. In order to begin the proceedings, a quorum must be present. A quorum is established if three voting members are present. Designees count toward reaching a quorum. If a quorum is present at the scheduled start time of the proceedings; however, the Agreement State Liaison is not present, the MRB will delay the start of the proceedings to make every effort to ensure that the designated Agreement State Liaison or an alternate is in attendance. If, after a reasonable amount of time, an Agreement State Liaison cannot be found, the meeting will proceed without an Agreement State Liaison, but efforts will be made concurrently with the meeting to continue to locate an Agreement State Liaison for the meeting.
2. The MRB Chair will consult with the other MRB members to reach a consensus position on each indicator and, if necessary, to provide specific instruction to the IMPEP team leader. If a consensus is not apparent, a vote is taken and a simple majority decides the MRB's position regarding findings and report revisions. In the situation where there is a tie vote, the MRB Chair will make the final decision.
3. In some instances, the overall program adequacy finding and, for Agreement States, the compatibility finding may not be possible at the time of the MRB meeting. In those cases, a report is issued to the Region or Agreement State within 30 days after the MRB that addresses both completed review findings and the status of outstanding issues. A report supplement will be issued when the outstanding areas are resolved by the MRB.
4. The MRB may choose to go into an executive session during the public meeting at the discretion of the MRB Chair. For all matters that require a formal vote by the MRB, the vote will take place during the public meeting, regardless of whether the topic was discussed in an executive session or not. Efforts will be made by the MRB Chair to include the Agreement State Liaison in any executive sessions.

D. Actions Deriving from MRB Recommendations and Review Team Findings

1. If the MRB recommends that an Agreement State be placed on heightened oversight or monitoring, the guidance in NMSS Procedure SA-122, *Heightened Oversight and Monitoring*, will be followed.
2. If a finding of “adequate, but needs improvement” is made of a Region, the DEDM and the Director, NMSS, will consult with the Executive Director for Operations to determine what remedial steps need to be taken, and will inform the Commission accordingly. Probation, suspension, and termination are not applicable to Regional programs. NRC must implement immediate action to correct Regional program weaknesses that are similar to those that would warrant probation, suspension, or termination actions for an Agreement State.
3. If the MRB recommends that NRC initiate proceedings to place an Agreement State program on probation, NMSS Procedure SA-113, *Placing an Agreement State on Probation*, will be followed.
4. If the MRB recommends that NRC initiate proceedings to suspend an Agreement State program, NMSS Procedure SA-114, *Suspension of a Section 274b Agreement*, will be followed.
5. If the MRB recommends that NRC initiate proceedings to terminate an Agreement State program, NMSS Procedure SA-115, *Termination of a Section 274b Agreement*, will be followed.

E. Letters of Support

In accordance with the August 26, 2004 SRM-MO40817B (ML042390337), staff proposed a process for issuing “letters of support” to Agreement States. The process included options for issuing such letters on a staff-to-staff basis, with or without a request from affected Agreement States, and review and approval by the MRB. Samples of all IMPEP letters can be found in NRC’s ADAMS.

1. The MRB may direct NRC to issue a letter of support, upon receipt of a request from an Agreement State Program Director. In such a case, the Agreement State Program Director may view that their program is experiencing decline, is unable to replace staff, or need the NRC’s support to help the program to effectively compete for Department resources. A State submitted request, will be considered for a letter of support provided:
  - a. The request is submitted to the Chair of the MRB (i.e., DEDM) in writing;
  - b. The purpose of the request for a letter of support is clearly identified;
  - c. The request contains a detailed description of the program performance issues, including an assessment of the performance indicator(s), that the Agreement State Program Director believes will result in less than a “satisfactory” rating if the IMPEP criteria were applied;

- d. The request contains a "Staff Needs Analysis," performed as described in NMSS Procedure SA-700, *Processing an Agreement*, when staffing issues are to be addressed; and,
      - e. The request includes a description of the efforts made by the program to address the performance issues.
  2. The MRB will consider the request at its next scheduled meeting, or sooner if warranted. The Agreement State Program Director should be available to discuss the request with the MRB during the meeting.
  3. The MRB will determine if a letter of support is warranted based on the following criteria:
    - a. The performance issues are significant enough to warrant either heightened oversight or monitoring as stated in NMSS Procedure SA-122, *Heightened Oversight and Monitoring*;
    - b. The underlying cause of issues in performance areas needing improvement are budget and staffing issues that may need senior-level management attention; or
    - c. One or more performance indicators have the potential to result in an unsatisfactory rating if the IMPEP criteria were applied.
- F. Extension of Review Period
  1. If a State has been found satisfactory for all performance indicators during two consecutive IMPEP reviews, the letter for transmitting the final IMPEP review will include language commending the State for consistently meeting the standards of performance in all program areas or for the State's continued support in protecting public health and safety. If a State meets the above criteria, the MRB may exercise the option to extend a State's performance review period from 4 to 5 years (see NMSS Procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*).
  2. The MRB may also issue a letter of support to congratulate a State during special occasions such as achieving a milestone or celebrating a particular anniversary of the Agreement signing.

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1 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 still in effect and will be referenced as FSME 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 website under "Resources and Tools," and then "NMSS Procedures."



**VI. REFERENCES**

1. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program*.
2. NMSS Procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*.
3. NMSS Procedure SA-113, *Placing an Agreement State on Probation*.
4. NMSS Procedure SA-114, *Suspension of a Section 274b. Agreement*.
5. NMSS Procedure SA-115, *Termination of a Section 274b. Agreement*.
6. NMSS Procedure SA-116, *Periodic Meetings with Agreement States Between IMPEP Reviews*.
7. NMSS Procedure SA-122, *Heightened Oversight and Monitoring*.
8. NMSS Procedure SA-700, *Processing an Agreement*.

**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 the NRC's ADAMS are listed below.

No.	Date	Document Title/Description	Accession Number
1	2/22/00	Summary of Comments on SA-106	ML011230584
2	5/18/00	STP Procedure SA-106	ML011230579
3	6/23/03	STP-03-048, Opportunity to Comment on Draft Revisions to STP Procedure SA-106	ML031740499
4	9/3/03	Summary of Comments on SA-106	ML040030005
5	9/8/03	STP Procedure SA-106	ML040030003
6	10/5/05	STP Procedure SA-106	ML061290105
7	10/5/05	Summary of Comments on SA-106	ML061290195
8	1/25/07	FSME-07-003, Opportunity to Comment on Draft Revisions to STP Procedure SA-106	ML070260137
9	5/14/07	FSME Procedure SA-106	ML071370629
10	8/6/10	FSME-10-073, Opportunity to Comment on Draft Revisions to FSME Procedure SA-106	ML102090030
11	3/4/11	FSME Procedure SA-106	ML110550453

