

November 27, 2002

ALL AGREEMENT STATES, MINNESOTA, PENNSYLVANIA, WISCONSIN

OPPORTUNITY TO COMMENT ON DRAFT STP PROCEDURE SA-122, "HEIGHTENED OVERSIGHT" (STP- 02- 080)

Enclosed for your review and comment* is the draft Office of State and Tribal Programs (STP) Procedure SA-122, "Heightened Oversight." This procedure describes the process to be used by NRC to conduct heightened oversight of an Agreement State Program. This is a new draft procedure. We would appreciate receiving your comments within 30 days from the date of this letter.

Thank you for your attention to this matter. If you have any questions regarding this correspondence, please contact me on 301-415-3340 or the individual named below.

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/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

*This information request has been approved by OMB 3150-0029, expiration 06/30/04. The estimated burden per response to comply with this voluntary collection is approximately 6 hours. Forward any comments regarding the burden estimate to the Information and Records Branch (T-6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0029), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.



STP Procedure Approval

Heightened Oversight

SA-122

Issue Date:

Renewal Date:

Paul H. Lohaus
Director, STP

Date:

Josephine M. Piccone
Deputy Director, STP

Date:

James L. Lynch
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Date:

NOTE

The STP Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual. Any changes to the procedure will be the responsibility of the STP Procedure Contact. Copies of STP procedures will be distributed for information.



I. INTRODUCTION

This document describes the procedure used by the Nuclear Regulatory Commission (NRC) to conduct heightened oversight of an Agreement State program.

II. OBJECTIVES

- A. To provide the guidelines that will be followed by the NRC when significant weaknesses are identified in an Agreement State radiation control program, which do not necessitate probation, immediate suspension or termination of the agreement.
- B. To ensure that progress is being made to improve performance of the program without degradation of other parts of the State's radiation control program.
- C. To provide a State on heightened oversight an understanding of the process, their role, and any actions expected of them.
- D. To assist an Agreement State in restoring the radiation control program to the standards identified in Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.

III. BACKGROUND

- A. Section 274j of the Atomic Energy Act gives the Commission authority and responsibility for ensuring that Agreement State programs continue to provide adequate protection of the public health and safety and are compatible with NRC's program. In cases where the Commission finds that significant program deficiencies are identified regarding the adequacy and/or compatibility of the State's program, several options are available to ensure continued protection of the public.
- B. If the deficiencies are serious enough to find the program inadequate to protect public health and safety, probation, emergency suspension or termination of the Agreement State program is appropriate. If the deficiencies are not so serious as to find the program inadequate to protect public health and safety, monitoring or heightened oversight of the Agreement State program, by NRC, is warranted. Monitoring is considered a level below heightened oversight and involves increased observation of, and communication with, a State.

- C. Heightened oversight is a formalized interaction process which allows the NRC to maintain an increased level of communication with the State and thus keep informed of the State's ability to protect public health and safety.

IV. ROLES AND RESPONSIBILITIES

A. Management Review Board (MRB):

1. Makes the final decision on the adequacy and compatibility of an Agreement State program under IMPEP.
2. Determines whether an Agreement State will be placed on heightened oversight, using the results of program reviews and any other relevant information.
3. Designates a recommended period of time for the heightened oversight, usually not to exceed one year.
4. Considers improvements made by an Agreement State program and the resolution of the IMPEP review team's recommendations to determine if the heightened oversight status should be lifted. Follow-up review findings will provide a basis for the decision.
5. In the event the Agreement State does not correct the deficiencies that led to the heightened oversight, the MRB will direct the Office of State and Tribal Programs to prepare a Commission paper requesting approval for the appropriate next action.

B. Director, Office of State and Tribal Programs (STP):

1. Keeps the MRB informed of the status of all Agreement State programs on heightened oversight.
2. Coordinates follow-up IMPEP reviews (see STP Procedure SA-119, *Follow-up IMPEP Reviews*) of Agreement State programs.
3. Reports annually to the Commission the status of States on heightened oversight or being monitored.

4. Prepares and sends heightened oversight letter to the Agreement State. See Appendix A for an example of a heightened oversight letter.
 5. Prepares, at the direction of the MRB, a Commission paper requesting approval for additional actions if the Agreement State does not correct the deficiencies that led to the heightened oversight, within the designated time frame. The Commission paper will include the status of the Agreement State program, recommendations of the MRB and any other pertinent information.
- C. IMPEP Team Leader:
1. Recommends to the MRB if heightened oversight (or other action) of a State radiation control program should be considered, based on the results of an IMPEP review.
 2. Provides the Regional State Agreements Officer (RSAO) with information and support for heightened oversight activities.
- D. Regional State Agreements Officer:
1. Coordinates all heightened oversight activities for the State when an IMPEP review identifies the need for heightened oversight.
 2. Prepares draft agendas for each heightened oversight meeting and conference call and coordinates with the State. See Appendix B for a sample conference call agenda.
 3. Maintains minutes of all conference calls and meetings relating to the heightened oversight process and coordinates with the State to develop a clear understanding of results. See Appendix C for sample conference call minutes.
 4. Keeps STP management informed of the Agreement State radiation control program's status.

5. Ensures that heightened oversight correspondence, such as letters, minutes and e-mail messages, is entered into NRC's Agencywide Documents Access and Management System (ADAMS).
 6. Coordinates monitoring of Agreement State programs, when warranted.
 7. Participates, as a team member, on follow-up IMPEP reviews.
 8. Recommends to the MRB if heightened oversight of a State radiation control program should be considered, based on the results of periodic meetings, orientation meetings or other communications with a State.
- E. Agreement State Project Officer (ASPO):
1. Assists the RSAO's coordination of heightened oversight activities.
 2. Participates in conference calls and meetings for assigned States.
- F. IMPEP Team Member:
1. Assists the RSAO's coordination of heightened oversight activities, as requested.
 2. Participates on follow-up IMPEP reviews, as needed.

V. GUIDANCE

- A. Use of the Heightened Oversight Process
1. The MRB may direct a period of heightened oversight to be initiated when findings from an IMPEP review, periodic meeting or other mechanism identify significant program deficiencies regarding the adequacy and/or compatibility of an Agreement State's radiation control program.
 2. The heightened oversight process is a tool designed to increase communication and interaction with a State radiation control program experiencing significant program deficiencies. The State must have a strong management commitment to improve the program for NRC to choose the heightened oversight option.

3. Heightened oversight also allows NRC to assist the program by bringing deficiencies to the attention of State management and, in some cases, help the program enlist aid from other Agreement States.

B. Heightened Oversight Criteria

1. When one or more of the common and non-common performance indicators are found unsatisfactory and are of such safety significance that assurance of the program's ability to protect the public health may be degraded, heightened oversight by the NRC will be considered by the MRB as described in MD 5.6.
2. Heightened oversight decisions may also be based on the results of periodic meetings or other evaluations of an Agreement State radiation control program. The loss of key State personnel could be a factor in the decision process.
3. The MRB may consider heightened oversight if senior Agreement State management make strong commitments to improve their program. The Board should be confident that the State is capable of implementing those commitments and that the actions by the Agreement State will result in necessary program improvements. Heightened oversight, in this instance, is a preferred option rather than pursuing probation, suspension, or termination.
4. Monitoring of an Agreement State program may be appropriate if heightened oversight is not warranted but a program weakness is identified during an IMPEP review or periodic meeting. Monitoring may also be considered, after implementation of a program improvement plan, to provide assurance that an Agreement State maintains a fully adequate and compatible radiation control program. Monitoring will be coordinated by the RSAO.

C. Required Elements for Initiation of Heightened Oversight

1. State program improvement ("get-well") plan.

This improvement plan should be comprehensive and include actions taken to respond to the recommendations in the final IMPEP report. It should fully discuss root causes for deficiencies and include short and long-term corrective actions. The plan should also contain dates of expected actions and products and indicate the person(s) responsible for each product. An example of a program improvement plan may be found in Appendix D.

2. Periodic progress reports (at least every other month).

These written reports should address State actions to improve the radiation control program in accordance with the program improvement plan and should be sent to the RSAO approximately two weeks before the next scheduled conference call.

3. Periodic NRC/State conference calls.

These calls are designed to maintain open communications between the State and NRC and should be held at least quarterly. The calls should involve State management responsible for improving the program and the IMPEP team leader, the ASPO, the RSAO, and other NRC staff as needed. A draft agenda, coordinated with State management, should be prepared by the RSAO and distributed at least one week prior to the call.

4. As elements of the program improvement plan are completed by the State, the accomplishments should be noted in the conference call summaries and need not be included in future State progress reports.

D. Optional Elements for the Heightened Oversight Process

1. NRC letters to Governor and/or Congressional representatives.
The NRC may offer to have NRC management (the Executive Director for Operations or the Chairman) communicate concerns about the program to the Governor and/or Legislative Leadership. State program managers need Executive and Legislative-level support for their programs. Communication with State lawmakers may facilitate State attention to necessary actions and resources needed to address performance problems.
2. NRC/State management meetings.

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

3. Request for temporary assistance from other States.

Temporary assistance may be requested from another Agreement State. The Conference of Radiation Control Program Directors and the Organization of Agreement States could serve as a resource for States in need.

4. Contract employees hired by State.

Radiation control programs may hire contract employees to perform training, licensing and inspection tasks. The contractor may be a current or former employee of another radiation control program.

5. Follow-up review by an IMPEP team.

The MRB will normally determine if, and when, a follow-up review should be performed to evaluate progress in resolving deficiencies. See STP Procedure SA-119 for additional information on follow-up reviews.

6. Post follow-up review conference calls.

After a follow-up review is completed, quarterly conference calls between the State and the RSAO may be instituted until the next IMPEP review or periodic meeting.

E. Agreement State Actions:

1. Agreement State Program Managers are responsible for development and implementation of a program improvement plan. The plan should include elements as discussed above.
2. Agreement State Program Managers also have the responsibility to prepare periodic progress reports and participate in NRC/State conference calls.

VI. APPENDICES

Appendix A - Sample Heightened Oversight Letter
Appendix B - Sample Conference Call Agenda
Appendix C - Sample Conference Call Minutes
Appendix D - Sample Program Improvement Plan

VII. REFERENCES

- A. STP Procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*
- B. STP Procedure SA-106, *Management Review Board*
- C. STP Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*
- D. STP Procedure SA-113, *Placing an Agreement State on Probation*
- E. STP Procedure SA-114, *Suspension of a 274b Agreement*
- F. STP Procedure SA-115, *Termination of a 274b Agreement*
- G. STP Procedure SA-116, *Periodic Meetings with Agreement States Between IMPEP Reviews*
- H. STP Procedure SA-119, *Follow-up IMPEP Reviews*

APPENDIX A

Sample Heightened Oversight Letter

[NAME]
[TITLE, STATE SENIOR MANAGEMENT]
[ADDRESS]

Dear [NAME]:

On [DATE], the Management Review Board (MRB) met to consider the proposed final Integrated Materials Performance Evaluation Program (IMPEP) report on the [STATE] Agreement State program. The IMPEP review was conducted [DATE]. The MRB had received for consideration the comments in [NAME]'s letter dated [DATE]. The MRB found the [STATE] program adequate but needs improvement, and not compatible with NRC's program. Because of the significance of the concerns, the MRB recommends heightened oversight of the [STATE] program. I request that bi-monthly conference calls take place with the appropriate [STATE] and NRC staffs to discuss the status of the program. The Office of State and Tribal Programs will coordinate the bi-monthly conference calls. I request that, two weeks prior to the calls, you submit a brief status report on the activities conducted since the last report and the necessary statistical data.

I also request that you prepare and submit a program improvement plan that addresses the recommendations in Section 5 of the enclosed final report. I request that this report be submitted within 30 days of this letter. Upon review of the program improvement plan, the staff will schedule the first conference call and a more detailed outline for the status reports. I request the initial conference call be scheduled and conducted no later than [DATE].

Based on the results of the current IMPEP review, a follow-up review will be scheduled during the period [TIMEFRAME]. The follow-up review will cover the State's action on the recommendations from the [DATE] review.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review and your continuing support of the [NAME OF AGREEMENT STATE ORGANIZATIONAL UNIT]. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

[NAME]
Deputy Executive Director for Materials,
Research and State and Tribal Programs

Enclosure:
As stated
cc: See next page

APPENDIX B

Sample Conference Call Agenda

Date: [DATE]

Time: [TIME]

Non-NRC Participant Telephone Number:

Dial [PHONE NUMBER]; enter Access Code [NUMBER]

NRC Participant Telephone Number:

Dial [PHONE NUMBER]; enter Access Code [NUMBER]

Discussion Items

1. Status of Actions in [DATE] letter
 - a. [LIST ACTIONS TO BE DISCUSSED, SUCH AS PERFORMANCE INDICATORS IDENTIFIED WITH PROBLEMS FROM THE IMPEP REVIEW]
 - b.
 - c.
2. Discussion of Changes to Items or Dates for Completion
3. Potential Timeframe for Follow-Up Review
4. Date for Next Conference call (Date and Time)

Attached are the minutes from the [DATE - PREVIOUS CALL] conference call and [STATE'S] [DATE] status letter. STATE previously submitted status letters in [LIST DATES] addressing recommendations in the IMPEP report and the necessary actions in the heightened oversight program.

If you have any questions, please call me at [PHONE NUMBER]

[REGIONAL STATE AGREEMENT OFFICER]

APPENDIX C

Sample Conference Call Minutes

[STATE]: [DATE]

The minutes are presented in the same general order as the items were discussed in the meeting. The participants were as follows:

[TEAM LEADER]

[RSAO]

[STP MANAGER]

[REGIONAL MANAGER]

[LIST STATE PARTICIPANTS]

1. Status of Actions in [DATE] Letter

[LIST ACTIONS] [SUMMARIZE STATE'S ACTION TO DATE. DOCUMENT DISCUSSIONS WITH STATE REGARDING EACH ACTION]

[LIST ACTIONS] [SUMMARIZE STATE'S ACTION TO DATE. DOCUMENT DISCUSSIONS WITH STATE REGARDING EACH ACTION]

[LIST ACTIONS] [SUMMARIZE STATE'S ACTION TO DATE. DOCUMENT DISCUSSIONS WITH STATE REGARDING EACH ACTION]

2. Discussion of Changes to Items or Dates for Completion.

[SUMMARIZE DISCUSSION]

3. Future Status Reports. [STATE] will submit a status report prior to the [DATE] conference call.

4. Date for Next Conference Call (date and time). The next call was set up for [DAY], [DATE] at [TIME].

5. Additional Topics. [DOCUMENT ADDITIONAL DISCUSSIONS AS NEEDED]

APPENDIX D

Sample Program Improvement Plan

Recommendation	Tasks	Milestones	Assignments	Anticipated Completed Date	Status	Completion Date
Good performance licensee inspection extension	Develop written policy on good performance procedures	Written policy developed	Insert staff name	12/10/01	Completed	12/10/01
		Written policy reviewed	Insert manager name	12/31/01	Completed	12/31/01
		Written policy implemented	Insert staff name	1/15/02	Completed	12/31/01
		Record of adjustment make to licensee files	Insert staff name	2/28/02	Completed	5/6/02
Management measures to insure timely inspections	1. Review overdue inspection list monthly	Prioritize and assign inspections to staff	Insert manager name	12/10/01	Completed	12/08/01
		University A - Broad Licensee inspection	Insert staff name	12/31/01	Completed	12/19/01
		University B - Broad Licensee inspection	Insert staff name	12/31/01	Completed	1/25/02
		Radiographer A inspection	Insert staff name	1/31/02	Completed	2/6/02
		Irradiator Facility A inspection	Insert staff name	4/30/02	Completed	4/16/02
		Medical Broad Licensee inspection	Insert staff name	4/30/02	Completed	4/25/02
	2. Review staffing options	Create health physicist series - 5 step process	Insert manager(s) names	12/18/01	Completed (approved by legislation)	5/24/02
		Review current State Agreement Program organization structure	Insert manager(s) names	6/30/02	In process	
		Review operational processes for efficiency	Insert manager(s) names	8/31/02	In process	

Recommendation	Tasks	Milestones	Assignments	Anticipated Completed Date	Status	Completion Date
		Consider contracting with private sector	Review options (Insert manager(s) names)	1/31/02	Completed	2/15/02
			Review pros & cons (Insert manager(s) names)	2/15/02	Completed	2/15/02
			Decision to proceed (Radiation Control Program Director)	2/28/02	Completed	2/28/01
			Contract approved to hire consultant	4/18/02	Completed	4/18/02
		Consider contracts with past State employees/feds/other States	Draft letter seeking interest of past employees (Insert manager(s) names)			
			Review options (Insert manager(s) names)			
			Review pros & cons (Insert manager(s) names)			
			Response & decision to proceed			
			Draft contract (Insert manager(s) names)			
			Contract submitted to Administration for approval			
	3. Assure better communication regarding expectation of staff deliverables	Review Radiation Control Programs goals and objectives with each staff person	Finalize & send to each staff HP (Insert manager(s) names)	1/31/02 then Quarterly		

Recommendation	Tasks	Milestones	Assignments	Anticipated Completed Date	Status	Completion Date
		Review status of radioactive materials program goals and objectives and revise if necessary	(Insert manager(s) names)	Quarterly		
	4. Investigate Additional Funding Options	Revise Fees	Secure fee schedules from other States (Insert staff name)			
			Make decision on increases to fees (Insert manager(s) names)			
			Secure Technical assistance support in reviewing fees (Insert manager(s) names)			
			Draft Rules (Insert staff names)			
			Initiate Rulemaking (Insert staff names)			
			Final Rule			
			Implementation of new fees (Insert staff names)			
		Redirect Radiation Control Program funds	Draft legislation (Insert manager(s) names)			
			Introduce Legislation (Insert manager(s) names)			
			Approval by Legislation			

Recommendation	Tasks	Milestones	Assignments	Anticipated Completed Date	Status	Completion Date
Staff training plan development	1. Develop Radiation Control Program tracking sheets	Prepare chart indicating past and needed training of each health physicist (HP)	(Insert manager name)			
	2. Seek/apply for necessary training	Apply for future courses, complete necessary in-house travel forms	(Insert manager(s) and staff names)			
	3. Develop criteria for HP series progression	Review criteria developed by other States	(Insert manager(s) names)			
	4. Define criteria for progression up ladder	Draft and decide on criteria	(Insert manager(s) names)			
Address staff turnover	Review enhancement possibilities	Introduce HP series	Explore other States' HP series job description (Insert manager(s) names)			
			Draft necessary job description			
			Write justification for review			
			Review, revise, and submit (Insert manager(s) names)			
		Introduce a workforce development plan	(Insert manager(s) names)			

Recommendation	Tasks	Milestones	Assignments	Anticipated Completed Date	Status	Completion Date
Examine and change business processes and organization of the Radiation Control Program to improve the effectiveness and efficiency of the program	1. Work with the advisory committee in pursuing recommendations for improvements as noted in rad material survey	Review options with advisory committee. Proceed as directed				
	2. Track with the NRC bi-monthly regarding status of this "Improvement Plan"	Schedule telephone conference with NRC				
		Prepare Program Improvement Plan status report	(Insert manager(s) names)	every 2 months	On going	
Develop and implement an action plan to adopt NRC regulations in accordance with current policy on adequacy and compatibility	Rule Revision	Convert existing rules to Word and proof	(Insert staff names)			
		Review existing rules for changes	(Insert staff names)			
		Determine necessary revisions	(Insert staff names)			
		Draft rules for compatibility	(Insert staff names)			
		Submit rules for public comment	(Insert staff names)			
		Rules issued for 60 comment period and transmitted to NRC for review	(Insert staff names)			
		Comments resolved and transmitted for final issuance	(Insert staff names)			
		Final regulations sent to NRC for final review	(Insert manager(s) names)			