



Office of Nuclear Material Safety and Safeguards Procedure Approval

Enhanced Oversight State Agreements (SA) Procedure SA-122

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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 document describes the procedures used by the Nuclear Regulatory Commission (NRC) to conduct enhanced oversight of an Agreement State program. Enhanced oversight is conducted via heightened oversight or monitoring based upon the severity of the program's issues.

II. OBJECTIVES

- A. To provide the guidelines that will be followed by NRC when performance weaknesses are identified in an Agreement State radiation control program that 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 relative to the areas identified as needing improvement, without degradation of other parts of the Agreement States radiation control program.
- C. To ensure an Agreement State on heightened oversight or monitoring understands the process, their role, and any actions expected of them.
- D. To assist an Agreement State in restoring the radiation control programs performance to the criteria 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 public health and safety and are compatible with NRCs program. In cases where the Commission finds that significant program weaknesses exist regarding the adequacy and/or compatibility of the Agreement States program, several options are available to ensure continued protection of the public.
- B. If the areas needing improvement are serious enough such that the NRC determines that the program is inadequate to protect public health and safety, emergency suspension, suspension, or termination of the Agreement between the State and the NRC should be considered. If the areas needing improvement are not serious enough to find the program inadequate to protect public health and safety, probation, heightened oversight, or monitoring of the Agreement State program by NRC is warranted.
- C. Heightened oversight is a formalized process that allows NRC to maintain an increased level of communication with an Agreement State program experiencing program weaknesses. It allows NRC to monitor the actions being taken and the implementation schedule for those actions that address the weaknesses identified in the Agreement State program. The decision to place an Agreement

State program on heightened oversight is made by the Management Review Board (MRB) Chair, based on the results of an IMPEP review, a periodic meeting or other interaction with the Agreement State program.

- D. Monitoring is an informal process that allows NRC to maintain an increased level of communication with an Agreement State program. Monitoring is implemented in cases where weaknesses in a program have resulted in, or could result in, less than satisfactory performance for one, or more performance indicators. Monitoring may be considered based on results of an IMPEP review, a follow-up IMPEP review, a periodic meeting, or other interaction with the Agreement State program.

IV. ROLES AND RESPONSIBILITIES

A. Management Review Board (MRB) Chair

1. Makes the final decision on the adequacy and compatibility of an Agreement State program under IMPEP
2. Determines whether an Agreement State program will be placed on heightened oversight or monitoring based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program.
3. Designates a period of time for the heightened oversight or monitoring process.
4. Considers improvements made by an Agreement State program and the resolution of the IMPEP review teams' recommendations to determine if the heightened oversight or monitoring process should be discontinued. Results from an IMPEP review, a follow-up IMPEP review, or a periodic meeting will provide a basis for the decision.
5. Directs the Office of Nuclear Material Safety and Safeguards (NMSS) to prepare a Commission paper requesting approval for an appropriate next action when an Agreement State does not correct the weaknesses that led to heightened oversight status. Options for appropriate next actions (e.g. probation, suspension, termination) may be found in the procedures located on NMSS/MSST SharePoint webpage at <https://scp.nrc.gov/procedures.html>.

B. Director, Division of Materials Safety, Security, State, and Tribal Programs (MSST)

1. Keeps the MRB informed of the status of Agreement State programs that are subject to the heightened oversight or monitoring process.
2. Coordinates follow-up IMPEP reviews of Agreement State programs.

3. Reports annually to the Commission on the status of the Agreement States, focusing on those on heightened oversight, or monitoring.
4. Prepares the letter transmitting the final IMPEP report to the Agreement State when a State is placed on heightened oversight or monitoring.
5. Prepares and transmits notification of Agreement States placed on Enhanced Oversight to the Commissioners assistants through the Office of the Executive Director for Operations.
6. Prepares, based on the MRB Chair's consideration of the results of the follow-up review, a Commission paper requesting approval for additional actions if the Agreement State program does not address the weaknesses that led to heightened oversight status. The Commission paper will include the status of the Agreement State program, recommendations of the MRB Chair, and any other pertinent information.

C. IMPEP Team Leader

1. Recommends to the MRB whether an Agreement State program should be placed on heightened oversight or monitoring, based on the results of an IMPEP review, or a follow-up IMPEP review of the Agreement State program.
2. Provide assistance and support to the Regional State Agreements Officer (RSAO) for heightened oversight or monitoring activities.

D. RSAO

1. Leads and coordinates heightened oversight or monitoring activities with the Agreement State program management and other NRC staff.
2. Prepares minutes of all conference calls relating to the heightened oversight or monitoring process and coordinates the review of the minutes with the Agreement State program management and other NRC staff to ensure that a clear understanding of discussions was recorded.
3. Ensures that heightened oversight or monitoring correspondence such as letters, conference call minutes, and e-mail messages; is entered into NRC's Agencywide Documents Access and Management System (ADAMS).
4. Participates, as a team member, on follow-up IMPEP reviews.
5. Recommends heightened oversight or monitoring of an Agreement State program, in coordination with the NMSS Designee, for consideration by the MRB, based on the results of a periodic meeting, an orientation meeting, or another interaction with an Agreement State program.

6. Reviews and comments on the Program Improvement Plan submitted by an Agreement State on heightened oversight.

E. NMSS Designee

1. Participates, in coordination with the RSAO, in heightened oversight, or monitoring activities for assigned States.
2. Participates in conference calls for assigned Agreement States.
3. Reviews and comments on the Program Improvement Plan submitted by an Agreement State on heightened oversight.

F. Agreement State Program Manager(s)

1. Coordinates heightened oversight or monitoring activities with NRC.
2. Develops and implements a Program Improvement Plan during the heightened oversight period.
3. Prepares and submits periodic progress reports during the heightened oversight period.
4. Participates in heightened oversight or monitoring conference calls.

V. GUIDANCE

A. Heightened Oversight Criteria

1. If the MRB Chair finds an Agreement State program is unsatisfactory for one or more IMPEP performance indicators, the MRB Chair will consider placing the program on heightened oversight.
2. The MRB Chair may decide to place an Agreement State program on heightened oversight based on the results of a periodic meeting or other interaction with the Agreement State program. The 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 the decision process.
3. The MRB Chair may consider heightened oversight, as opposed to probation, or suspension, if senior Agreement State management makes strong commitments to improve the program. The MRB Chair 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.

4. The normal duration of the heightened oversight process is 1 year unless otherwise directed by the MRB Chair.

B. Monitoring Criteria

1. Monitoring of an Agreement State program may be appropriate if heightened oversight is not warranted, but a program performance weakness is identified during an IMPEP review or a periodic meeting or through other information provided by an Agreement State program.
2. Monitoring may also be considered, after implementation of a Program Improvement Plan under heightened oversight, to provide continued assurance that an Agreement State maintains a fully adequate and compatible radiation control program.
3. The normal duration of the monitoring process is until the next IMPEP review or periodic meeting unless otherwise directed by the MRB Chair.

C. Required Elements of Heightened Oversight and Monitoring

1. Heightened Oversight

a. State Program Improvement Plan.

The Program Improvement Plan should be comprehensive and must include actions to address the recommendations in the final IMPEP report. It must fully address the underlying causes for weaknesses and include short- and long-term corrective actions that target the identified causes. The plan must contain dates of expected actions, products to be developed or implemented, and indicate the person(s) responsible for each product. The State Communications Portal <https://scp.nrc.gov> has an example of a Program Improvement Plan. The Program Improvement Plan will be reviewed by the RSAO, the NMSS Designee, and any other necessary NRC staff. Preliminary review results will be discussed at the first conference call. A formal letter will be sent to the Agreement State acknowledging receipt and approval/disapproval of the Program Improvement Plan. The letter will also include any comments from the review of the Program Improvement Plan.

b. 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.

- c. Periodic NRC/State conference calls.
 - i. These calls are designed to maintain open communications between the Agreement State and NRC. The calls should involve Agreement State manager(s) responsible for improving the program and the IMPEP team leader, the RSAO, the NMSS Designee, and other NRC, or State staff, as needed.
 - ii. The periodic calls normally occur bimonthly unless, otherwise directed by the MRB Chair.
- 2. Monitoring
 - a. Under monitoring, a State does not need to prepare, or submit a Program Improvement Plan or written periodic progress reports.
 - b. Periodic NRC/State conference calls.
 - i. These calls are designed to maintain open communications between the Agreement State and NRC. The calls should involve Agreement State manager(s) responsible for improving the program and the RSAO, the NMSS Designee, and other NRC, or State staff, as necessary.
 - ii. The periodic calls will occur at a frequency agreed upon by the MRB Chair and the State.
- 3. Follow up review by an IMPEP team
 - a. The MRB Chair will normally determine if, and when, a follow up IMPEP review should be performed to evaluate State progress in resolving weaknesses. NMSS Procedure SA-119 has additional information on follow up reviews.
 - b. The results of a follow-up IMPEP review may be the basis for the MRB Chair's decision to continue or cease the heightened oversight process.
 - i. If the MRB Chair finds the Agreement State program is satisfactory for all performance indicators, the MRB should consider discontinuation of the heightened oversight process.
 - ii. If the MRB Chair finds the Agreement State program is improving and resolving the recommendations from the last IMPEP review but is satisfactory, and needs improvement in one or more performance indicators, the MRB Chair should consider taking the State off of heightened oversight and placing the State on monitoring.

- iii. If the MRB Chair finds the Agreement State program is not improving or resolving the recommendations from the last IMPEP review and is unsatisfactory for one or more performance indicators, the MRB Chair may elect to continue the heightened oversight process or may direct NMSS to prepare a Commission paper requesting approval for an appropriate next action.

D. Additional Actions for Programs Placed on Heightened Oversight or Monitoring

1. Letter Transmitting Final IMPEP Report

If an underlying cause of program weaknesses identified during the IMPEP review is determined to be fiscal concerns, the MRB Chair may direct staff to include additional language in the cover letter for the final IMPEP report to bring these issues to the attention of Agreement State senior management. Fiscal concerns include budget, staffing, and resource concerns. Communication with Agreement State senior management may facilitate necessary actions to address the fiscal concerns affecting the Agreement State radiation control program.

2. If the MRB Chair decides to place a State on heightened oversight or monitoring (or continue the State program on heightened oversight or monitoring), the MRB Chair may consider the issuance of a letter from the Chairman or the Executive Director of Operations (EDO) to the State Governor to communicate NRCs concerns about the program. The letter could assist the Governor in understanding the importance of the Agreement between NRC and the State, the status, and value of the State's radiation safety program and maintain internal State focus on the need to provide adequate funding for the Program. A letter addressed to the Governor would usually be signed by the Chairman and be provided to the Commission for review and approval. A sample letter to the State Governor can be found on the State Communications portal at <https://scp.nrc.gov>.
3. Alternatively, at the State's request, the letter could be sent to senior State management in the program instead of the State Governor. Depending on the seniority of the addressee, the letter would be signed by appropriate level of NRC management. The State Liaison Officer and the RSAO will be provided a copy of the letter.

4. NRC/State management meetings

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

5. NRC technical assistance

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

VI. REFERENCES

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

Management Directives are available at: <https://scp.nrc.gov>

Sample call summaries, Program Improvement Plan, 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	2/13/04	STP Procedure SA-122	ML040620458
2	7/28/05	STP-05-061, Opportunity to Comment on Draft Revision to STP Procedure SA-122	ML052100400
3	10/5/05	STP-05-076, Final STP Procedure SA-122	ML052790422
4	10/5/05	STP Procedure SA-122	ML061730034
5	10/5/05	STP Procedure SA-122 (redline/strikeout)	ML061730038
6	10/5/05	Summary of Comments on SA-122	ML061730043
7	7/23/09	FSME-09-058, Opportunity to Comment on Draft Revisions to FSME Procedures SA-113 and SA-122	ML091910356
8	2/18/10	FSME SA-122 Oversight and Monitoring	ML092750345
9	02/16/22	NMSS SA-122 (redline/strikeout)	ML21349B359
10	02/16/22	NMSS SA-122 Enhanced Oversight	ML21160A158