



STP Procedure Approval

Placing an Agreement State on Probation - SA-113

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NOTE

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Procedure Title:
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I. INTRODUCTION

This procedure describes the process used by the Commission when placing an Agreement State program on probation.

II. OBJECTIVES

To provide the guidelines that will be followed by the Nuclear Regulatory Commission (NRC) staff when considering whether to exercise the authority contained in Section 274j(2) of the Atomic Energy Act (Act), as amended, to place an Agreement State program on probationary status.

III. BACKGROUND

- A. Section 274j of the 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 serious program deficiencies are identified regarding the adequacy and/or compatibility of the State's program, but the deficiencies 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 the public's health and safety is to recommend placement of the Agreement State on probationary status.
- B. The Commission policy statement, "Statement of Principles and Policy for the Agreement State Program," dated September 3, 1997, established the option of placing an Agreement State program on probationary status for serious program deficiencies that require heightened oversight (see Sections F through H of policy statement).

IV. ROLES AND RESPONSIBILITIES

- A. The Management Review Board (MRB) is responsible for considering the results of the Agreement State review under the Integrated Materials Performance Evaluation Program (IMPEP). The MRB may also convene to evaluate special reviews of an Agreement State program conducted to assess a specific Agreement State program weakness and for recommending to the Commission whether probationary status is warranted (see SA-106, *Management Review Board*).

- B. The Executive Director for Operations (EDO) submits the Commission Paper containing the MRB's recommendation that NRC initiate the proceedings to place an Agreement State program on probation.
- C. The Office of State and Tribal Programs (STP) is responsible for taking the lead in the preparation and coordination of a Commission Paper recommending an Agreement State program be placed on probation and/or probation be terminated. STP also coordinates all follow up suspension and termination notifications, i.e., to the Governor, the Federal Register Notice, All Agreement State licensees, and All Agreement and Non-Agreement States, and for the review of State Corrective Action Plans and the development of Heightened Oversight Plans.
- D. The Office of Congressional Affairs (OCA) is responsible for notifying the appropriate Congressional committees and members of the States' Congressional delegation of the probationary status of the Agreement State probation.
- E. The Office of Public Affairs (OPA) is responsible for issuing a Press Release announcing the probationary status of the Agreement State program.

V. GUIDANCE

- A. Minimum Criteria for Considering Probation
 - 1. The MRB may meet to evaluate special reviews of an Agreement State program conducted to assess an Agreement State program weakness. The MRB meetings to discuss specific program review findings normally will be open and representative(s) from the State under review will be invited to participate.
 - 2. If the MRB identifies serious concerns regarding the adequacy and/or compatibility of the State's program, but does not find the deficiencies so serious as to find the program inadequate to protect public health and safety, one of the options it has available to ensure continued protection of the public's health and safety is to recommend placement of the Agreement State on probationary status. If the MRB finds an Agreement State program inadequate, no option other than to suspend or terminate the Agreement is available, since NRC can relinquish its regulatory authority only to a State that has a radiation control program that is adequate to protect public health and safety.

3. If the MRB determines probationary status is warranted, a meeting to discuss NRC concerns will be conducted by the Chair of the MRB; the Director, STP; the Administrator of the NRC Region in which the Agreement State is located; and the General Counsel (or designee) with the responsible cabinet-level official of the pertinent State.
4. If it is the final recommendation of the MRB that NRC place the Agreement State program in probationary status, STP will be assigned the lead for preparation of a Commission Paper. The Commission Paper will contain the information supporting the MRB recommendation. The Commission Paper will be coordinated with Offices represented on the MRB and the Region in which the Agreement State is located.
5. If the Commission approves, the Agreement State program will be placed on probationary status.

B. Details of the Criteria

Probation will be considered when any of the following circumstances occur:

1. When deficiencies in one or more of the common and non-common performance indicators of the IMPEP are of such safety significance that assurance of the program's ability to protect the public health may be degraded, and heightened oversight by the NRC is required. (Example: The Agreement State repeatedly fails to identify design deficiencies in follow-up analysis of events or incidents involving sealed sources and devices.)
2. When programmatic deficiencies have gone uncorrected for a significant period of time and the NRC is not confident of the State's ability to correct such deficiencies in an expeditious and effective manner without heightened oversight by the NRC. (Example: Inability to retain skilled staff, resulting in increased backlog in inspections and deficiencies in the technical quality of inspection and licensing programs.)
3. When a program has repeatedly been late in adopting required compatibility elements and heightened oversight by NRC would yield improvements. (Example: Inability/difficulty in adopting regulations which could result in significant impacts across State boundaries or allows licensees to be subject to less stringent requirements than NRC requirements determined to be necessary for compatibility.)

C. NRC Activities Upon Commission Approval of Action

1. A letter to the Governor notifying him or her of the Agreement State program probationary status will be sent (See Appendix A). A copy of the letter will be placed in the Agencywide Document Access and Management System. STP will draft the letter for the Chairman's signature and include it as an attachment to the Commission Paper recommending probation. The Chairman will usually discuss the letter with the Governor by telephone before it is mailed.
2. STP will prepare and dispatch a letter to the Agreement State program director requesting that the Agreement State develop a "Corrective Action Management Plan" and submit it to the STP within 30 days of receipt of the letter. The plan should describe actions to be taken by the State to address deficiencies, including specific goals and milestones.
3. Notice of the probationary status of the Agreement State program will be published in the *Federal Register* (See Appendix B).
4. STP will prepare and dispatch a letter to all Agreement and Non-Agreement States notifying them of the action.
5. A press release will be prepared and issued by OPA.
6. STP will coordinate with the OCA in order to notify the appropriate Congressional committees and members of the State's Congressional delegation.

D. Agreement State and NRC Activities During Probationary Period

1. The Agreement State's "Corrective Action Management Plan" will be reviewed by STP, Office of Nuclear Material Safety and Safeguards (NMSS), OGC, and the Region. NRC and the State may meet to discuss the plan, comment, and subsequently agree with the milestones, and determine the projected duration of the probationary period. Normally, the probationary period would be one year or less, but could be extended based on extenuating circumstances. (Example: Training new staff and/or eliminating significant inspection backlog may require more than one year.)

2. STP, in coordination with NMSS, OGC, and the Region, will develop a "Heightened Oversight Plan" that will include review or meeting frequency to assess the Agreement State's progress, expected NRC resource expenditure, and corrective action close-out list. NRC will consider providing technical assistance to the Agreement State, as appropriate in accordance with Management Directive 5.7, "Technical Assistance to Agreement States."
3. Once all items in the "Corrective Action Management Plan" have been executed and deemed closed by the STP after a review of the Agreement State's actions, the MRB will convene to review improvements and consider lifting the probation.
4. In the event the Agreement State does not complete the actions identified in the "Corrective Action Management Plan" and extenuating circumstances do not exist, the MRB will consider whether the Agreement should be suspended or terminated (see STP Procedure SA-114, *Suspension of a Section 274b Agreement* and STP Procedure SA-115, *Termination of a Section 274b Agreement*).

E. Cessation of Probationary Status

1. Once the MRB determines that the State has met the commitments in the "Corrective Action Management Plan" and the MRB is satisfied with the performance of the State's program, the MRB will recommend to the Commission that the probationary status cease.
2. STP will be assigned the lead for preparation of a Commission Paper. The Commission Paper will contain the information supporting the MRB decision. The Commission Paper will be coordinated with the Offices represented on the MRB and the Region in which the Agreement State is located.
3. If the Commission approves cessation of the probationary status, notification of such cessation will be made following the same process outlined in Section V. C. 1-6 above.

VI. APPENDICES

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

Appendix B - Draft Sample Letter: *Federal Register* Notice

VII. REFERENCES

1. STP Procedure SA-113, *Placing an Agreement State on Probation*, supersedes Office of State Programs Procedure D.23, February 5, 1997.
2. STP Procedure SA-106, *Management Review Board*.
3. STP Procedure SA-114, *Suspension of a Section 274b Agreement*.
4. STP Procedure SA-115, Termination of a Section 274b Agreement.
5. *Statement of Principles and Policy for the Agreement State Program*, dated September 3, 1997.
6. NRC Management Directive 5.7, *Technical Assistance to Agreement States*.

Appendix A

DRAFT SAMPLE: Letter to the Governor of [State] Probation

Dear Governor [Name]:

As you are 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 the public health and safety, and that they are compatible with NRC's program for regulating radioactive materials. The Commission may place a State's program on probation if the Commission is not confident that the State can address program deficiencies in an expeditious and effective manner without heightened oversight by the NRC.

The last review of the [State] radiation control program found significant program deficiencies, correction of which is necessary to assure adequate protection of the public health and safety in [State]. The Commission has further determined that while making the necessary corrections, the [State] program would benefit from increased NRC oversight. The Commission is, therefore, placing the [State] radiation control program on probationary status. 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 "Corrective Action Management Plan" describing actions to be taken to address the identified deficiencies, including specific goals and timetables. NRC staff will work with your staff throughout the probationary status period. Normally, the probationary period would be less than one year, but could be extended based on extenuating circumstances. Once the Commission determines that the commitments in the "Corrective Action Management Plan" have been met, and that the radiation control program can be found to be adequate and compatible, the probationary status will be terminated.

Let me assure you that the Commission has not taken this action lightly. I will be happy to answer any questions you may have, or your staff may contact [Name], Director, Office of State and Tribal Programs, at [telephone number].

Sincerely,

Chairman

Appendix B

DRAFT SAMPLE: *Federal Register Notice*

Placement of State Radiation Control Program on Probationary Status

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

ACTION: Notice of State Radiation Control Program Being Placed on Probationary Status

SUMMARY:

NRC is announcing the placement of [State] radiation control program for regulation of certain Atomic Energy Act materials on probationary status and initiating heightened oversight of the program, as well as overseeing implementation of the "Corrective Action Management Plan" developed by the staff of the [State] program. Once the radiation control program has met the commitments made in the "Corrective Action Management Plan," and can be found by the NRC to be adequate to protect the public health and safety, and compatible with NRC's program, the probationary status will be terminated. There will be further announcements of that action.

FOR FURTHER INFORMATION CONTACT:

[STP Contact], Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone [telephone number].

SUPPLEMENTARY INFORMATION:

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 the 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. Agreement States are States which have assumed regulatory authority from the NRC over the possession and use of certain radioactive materials. 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 probationary status for serious program deficiencies that require heightened 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 probationary status. [Narrative of the MRB findings].

Appendix B (Continued)

The State has been requested to develop a "Corrective Action Management Plan" and submit it to the NRC within 30 days. The plan should describe action taken by the State to address deficiencies, including specific goals and milestones. The Commission expects that the probationary period will be one year or less.

Once the MRB determines that the State has met the commitments in the "Corrective Action Management Plan" and can be found adequate to protect the public health and safety and compatible with NRC's program, a recommendation will be made to the Commission that the probationary status be terminated. Upon Commission approval, the probationary status will be lifted. Notification of such cessation will be made to the State's Governor, the State's Congressional delegation, and all other Agreement and Non-Agreement States. There also will be a *Federal Register* Notice and a Press Release.