

February 11, 2004

RESOLUTION OF COMMENTS ON SA-122, "HEIGHTENED OVERSIGHT REVIEWS"

I. Sent to the Agreement States for Comment: November 27, 2002 (STP-02-080)

Comments Dated: Illinois , December 2, 2002 (email)
Georgia, December 5, 2002 (email)
South Carolina, December 16, 2002 (email)

Response to/Resolution of Comments:

Illinois

Comment 1:

It could be my conversion from Word Perfect to Word that caused a lot of the formatting outline not to come through correctly--that is the Roman numerals, numbers, letters, etc.

Response:

Conversions from WordPerfect to Word may change the formatting outline. The formatting is correct in the WordPerfect version. There will be no change to the procedure based on this comment.

Comment 2:

On page 7 of 8 item 3, add ", Inc." after "Directors".

Response:

Due to a restructuring of Section V.D., Item 3 has been deleted. There will be no change to the procedure based on this comment.

Comment 3:

Also, on the same page item 4 should allow contracting with former employees of that states program such as is being done now in AR. I suggest changing "another" to "a".

Response:

Due to a restructuring of Section V.D., Item 4 has been deleted. There will be no change to the procedure based on this comment.

Georgia

Comment:

We have reviewed SA-122 Heightened Oversight of Agreement States who are "adequate but needs improvement, and not compatible with NRC's program." We do not have any comments to offer. It appears to be reasonable.

Response:

No response is necessary.

South Carolina

Comment:

South Carolina has no comments on this procedure.

Response:

No response is necessary.

II. Sent to the NRC Offices for Comment: November 27, 2002

Comments Dated: Region II, December 11, 2002 (memorandum)
Region I, December 17, 2002 (email)
NMSS, December 26, 2002 (memorandum)
Region IV, December 30, 2002 (email)
OCG, February 10, 2003 (mark up)
Region III, January 16, 2003 (mark up)

Region II

Note: Comments are provided on the following sections for clarification. The comments are shown in strike out and red lined format of the original statements from the draft procedure.

Comment 1:

Section IV. A. 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 and/or Periodic Meeting reports will provide a basis for the decision.

Response:

Region III, comment 10 also addresses a clarification to this section. We agree with the intent of the comments, but to account for the clarification of the monitoring process the following changes will be made to Section IV.A:

- 4.5. 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 process should be lifted-discontinued. Results from a follow-up IMPEP review findings will provide a basis for the decision.
6. Considers improvements made by an Agreement State program and the resolution of the IMPEP team's recommendations to determine if the monitoring process should be discontinued. Results from IMPEP reviews, periodic meetings or other information provided by the State may provide a basis for the decision.

Comment 2:

Section IV. C. 1.

~~Recommends~~ Provide team recommendations to the MRB for consideration of if heightened oversight (or other action), ~~of a State radiation control program should be considered~~, based on the results of an IMPEP review.

Response:

We appreciate the comment that the IMPEP team leader should provide team recommendations, but believe that it is the IMPEP team leader's responsibility to make the overall recommendation to the MRB for heightened oversight, not just to provide the team recommendations. The information from the team recommendations is implied in the phrase "based on the results of an IMPEP review." The staff will make the following clarification:

Recommends to the MRB ~~whether an Agreement State program should be placed on if heightened oversight or monitoring~~(or other action) ~~of a State radiation control program should be considered~~, based on the results of an IMPEP review or follow-up IMPEP review of the Agreement State program.

Comment 3:

Section IV. D. Regional State Agreements Officer:

1. Coordinates all heightened oversight activities ~~for~~with the State when ~~an IMPEP review~~ the MRB identifies the need for heightened oversight.
2. Prepares and coordinates draft agendas for each heightened oversight meeting and conference calls ~~and coordinates~~ with the State. See Appendix B for a sample conference call agenda.
3. ~~Maintains~~Prepares minutes of all conference calls and meetings relating to the heightened oversight process, and coordinates the minutes 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 Agency wide Documents Access and Management System (ADAMS).~~
(This is already covered under Agency and Regional guidance.)
- 6.5. Coordinates monitoring of Agreement State programs, when warranted.
- 7.6. Participates, as a team member, on follow-up IMPEP reviews.
- 8.7. ~~Recommends to the MRB if~~ heightened oversight of a State radiation control program ~~should be~~to STP for consideration by the MRB, based on the results of periodic meetings, orientation meetings or other communications with a State.

Response:

In addition to Region II's comments above, see Region I's comments 1 and 2. We agree with the intent of additional editorial clarifications from Region II with the exception of the deletion of item 5. Although there is Agency and Regional guidance for placing information in ADAMS, there have been questions from NRC staff as to who has the responsibility for placing documents in ADAMS. Placing this requirement in the STP procedure provides clarification. Region I comment 2 noted that revisions to specific profiling requirements for IMPEP documents into ADAMS, including heightened oversight and monitoring would be appropriate. We agree, however SA -600, "IMPEP Staff Procedures" which is presently under development, will be the procedure to provide the administrative staff with guidance on IMPEP, including placing documents in ADAMS. At this time we will not add this as reference to the list of references in the procedure. When the document is completed, it will be referenced in the guidance for all IMPEP related activities. In response to Region I comment 1, we believe that it is unnecessary to state in item 4 which NRC management needs information and will delete the item.

Note, staff has identified additional editorial clarifications to those offered by Region I and II and the section will be revised as follows:

1. Leads and coordinates all heightened oversight or monitoring activities with for the Agreement State program management and other NRC staff. ~~when an IMPEP review identifies the need for heightened oversight.~~
2. Prepares and coordinates draft agendas for each heightened oversight or monitoring meeting and conference call and coordinates with the Agreement State program management and other NRC staff. (See Appendix B for a sample conference call agenda.)
3. ~~Maintains~~ Prepares minutes of all conference calls and meetings relating to the heightened oversight and or monitoring process, and coordinates the minutes with the Agreement State program management and other NRC staff to ensure develop a clear understanding of results discussions. (See Appendix C for sample conference call minutes.)
- ~~4. Keeps STP management informed of the Agreement State radiation control program's status.~~
- 5.4. 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).
- ~~6. Coordinates monitoring of Agreement State programs, when directed by the MRB.~~
75. Participates, as a team member, on follow-up IMPEP reviews.
86. Recommends to the MRB if heightened oversight monitoring of an Agreement State radiation control program should be to STP in coordination with the Agreement State Project Officer (ASPO) for consideration by the MRB, based

on the results of periodic meetings, orientation meetings or other communications with an Agreement State program.

7. Reviews and comments on the program improvement plan submitted by an Agreement State on heightened oversight.

Comment 4:

Section V. B. 1. and 2. , Heightened Oversight Criteria

1. When one or more of the common and/or 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. Monitoring of an Agreement State program may be appropriate if heightened oversight is not warranted but a program performance deficiency-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.

Response:

Note, Section V.B.2. is incorrectly labeled in the Region II comments. This paragraph corresponds to Section V.B.4. Also see NMSS comment 2, Region IV comment 2, and Region III comments 6, 11, and 19. Several commentors offered clarifications and requested additional guidance on the differences between heightened oversight and monitoring. Based on these comments, portions of the procedure were restructured and revised to include monitoring where appropriate and to include a more concise definition and additional guidance for monitoring. The major changes to the procedure based on the comments offered will be incorporated as follows:

Revised Section III.D.

- 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.~~ Heightened oversight is a formal process which allows the NRC to maintain an increased level of communication with an Agreement State program experiencing significant program weaknesses. It allows NRC to understand 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) based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program. (See Section V. for criteria).

New Section III.D.

- D. Monitoring is an informal process which allows the 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 fully 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.

Revised Section IV.A.2.

2. ~~Determines whether an Agreement State will be placed on heightened oversight using the results of program reviews and any other relevant information.~~ Determines whether an Agreement State program will be placed on heightened oversight based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program.

New Section IV.A.3.

3. Determines whether an Agreement State program will be placed on monitoring, based the results of IMPEP reviews, periodic meetings or other information provided to the MRB.

Revised Section IV.B.1.

1. Keeps the MRB informed of the status of all Agreement State programs that are subject to ~~on~~ the heightened oversight or monitoring process.

Revised Section V.B.4.

AB. Heightened Oversight Criteria

1. ~~When~~ If the MRB finds an Agreement State program is unsatisfactory for one or more common ~~and~~ or 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,~~ the MRB will consider placing the program on heightened oversight ~~by the NRC will be considered by the MRB as described in MD 5.6.~~
2. The MRB may decide to place an Agreement State program on heightened oversight ~~decisions may also be based on the results of a~~ periodic meetings or other ~~evaluations of an~~ interactions with the Agreement State ~~radiation control~~ 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 ~~a~~ factors in the decision process.
3. The MRB may consider heightened oversight, as opposed to probation or suspension, if senior Agreement State management make strong commitments to improve their program. The MRB 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. The normal duration of the heightened oversight process is one year unless otherwise directed by the MRB. (See Section V.C.3. for guidance on MRB action to extend or discontinue heightened oversight.)

B. Monitoring Criteria

51. Monitoring of an Agreement State program may be appropriate if heightened oversight is not warranted, but a program performance deficiency ~~weakness~~ is identified during an IMPEP review, a periodic meeting, or 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.

Comment 5:

Section V. C. 3. , Required Elements for Initiation of Heightened Oversight

3. Periodic NRC/State conference calls.

These calls are designed to maintain open communications between the State and NRC and should be held in conjunction with the heightened oversight progress reports, or the ~~at least~~ quarterly monitoring process. The calls should involve State management responsible for improving the program and ~~the IMPEP team leader, the ASPO,~~ the RSAO, the ASPO, 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.

Response:

We appreciate the comment to include that the calls need to be made in conjunction with the oversight progress reports. This element is already included in Section V.C.2. Also, we do not believe it is appropriate to include the reference to monitoring, since an Agreement State is either in heightened oversight or monitoring, but not both processes at the same time. Also, it is the intent of the procedure to include the IMPEP team leader during the heightened oversight period. There will be no change to the procedure based on this comment. However, this section will be reorganized and revised based on additional editorial changes including a bimonthly frequency for calls as follows:

Revised Section V.C.1.

- c. Periodic NRC/State conference calls.

- i. These calls are designed to maintain open communications between the Agreement State and NRC ~~and should be held at least quarterly~~. The calls should involve Agreement State management responsible for improving the program and the IMPEP team leader, the ASPO, the RSAO, and other NRC or State staff as needed.
- ii. A draft agenda, coordinated with Agreement State program management and NRC staff, should be prepared by the RSAO and distributed at least one week prior to the call.
- iii. The periodic calls normally occur bimonthly unless otherwise directed by the MRB.
- iv. As elements of the program improvement plan are completed by the Agreement State, the accomplishments should be noted in the conference call summaries and need not be included in future State progress reports.

New Section V.C.2.

- 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 management responsible for improving the program and the RSAO, the ASPO, and other NRC staff as appropriate.
 - ii. A draft agenda, coordinated with Agreement State management and NRC staff, should be prepared by the RSAO and distributed at least one week prior to the call.
 - iii. The periodic calls will occur at a frequency agreed upon by the MRB and the State.

Region I

Comment 1:

Section IV.D. Regional State Agreements Officer: Add regional management to section 4.

Response:

See response to Region II, Comment 3.

Comment 2:

Section IV.D. Regional State Agreements Officer: STP should provide the Regions with guidance on the specific profiling requirements for placing heightened oversight correspondence into ADAMS.

Response:

See response to Region II, Comment 3.

Comment 3:

Section V.B.2. Heightened Oversight Criteria: Add the following factors as examples in addition to the loss of key personnel; a shift in resources to address specific State priorities (i.e., Rhode Island's decision to emphasize licensing instead of inspections), the lack of a State response to a catastrophic event (i.e., variation on the New Mexico experience) and deliberate misconduct on the part of a State official (i.e., the Anderson-Envirocare case in Utah). A high threshold would be applied to the last two cases in order to place the State in heightened oversight.

Response:

See response to Region II, Comment 4. We agree with the comment however we believe that a lack of a State response to a catastrophic event would require the NRC to take significant action, such as an emergency suspension of the Agreement to deal with the event. Revised text can be found in response to Region II, comment 4.

Comment 4:

Section V.C.2. Periodic Progress Reports: The written reports to be provided to the RSAO should be characterized as summaries. The State needs to place its resources on doing its work and not preparing reports for the NRC. Rewrite the section to indicate that the State should provide a summary and updated improvement plan to the RSAO.

Response:

We agree with the intent of the comment and will revise the procedure as follows:

~~These written reports should address Agreement 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.~~ 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 two weeks before the next scheduled conference call.

Comment 5:

Section V.D. Optional Elements for the Heightened Oversight Process: Add an item to indicate that the State can seek technical assistance from the NRC in accordance with Management Directive 5.7.

Response:

We agree with this comment and will revise the procedure to include the following new Section V.D.5. Also the list of references will be revised to include both MD 5.6 and 5.7.

3. NRC technical assistance.

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

NMSS

Comment 1:

Page 1, Part II, Objectives:

Item C indicates one of the objectives is to provide a State on heightened oversight with an understanding of any actions expected of them. Part V, Guidance, provides descriptions of expected actions on the part of the State, nevertheless for completeness there should be a description of the State's responsibilities, in parallel with the responsibilities of the NRC, in a subsection of Part IV, Roles and Responsibilities.

Response:

We agree with this comment and will revise the procedure to include the following new Section IV.G:

- G. Agreement State Program Management:
 - 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.

In addition, Agreement State Actions, Section V.E will be deleted. Section V.E. had contained some of the responsibilities of the Agreement State, which will now be listed in section IV.G.

Comment 2:

Page 1, Part III, Background, and Pages 4-7, Part V, Guidance.

Part III defines monitoring as a level below heightened oversight and involves increased observation and communication. However, heightened oversight also involves increased observation and communication. The procedures should provide more explanation on the difference between heightened oversight and monitoring, such as specifying which elements of heightened oversight are not included in monitoring.

Response:

We agree with this comment and have made changes to clarify the monitoring process. See response to Region II, comment 4 for revised text.

Comment 3:

Page 2, Part IV. A, Management Review Board:

Paragraph 5 of this section discusses the possibility of requesting approval for the appropriate next action. A statement should be included to indicate what further actions are available, and/or where such actions are defined.

(Also Page 3, Part IV. B, Director, Office of State and Tribal Programs, paragraph 5.)

Response:

We believe that as written, the procedure allows maximum flexibility. However, STP has three procedures that were approved by the Commission for probation, suspension and termination. Section IV.A.5. will have the following statement added to the paragraph:

In the event the an Agreement State does not correct the deficiencies weaknesses that led to the heightened oversight status, the MRB will may elect to continue the heightened oversight process or may direct the Office of State and Tribal Programs (STP) to prepare a Commission paper requesting approval for the an appropriate next action. Options for appropriate next actions can be found in STP Procedures SA-113, *Placing an Agreement State on Probation*, STP Procedure SA-114, *Suspension of a Section 274b Agreement*, or STP Procedure SA-115, *Termination of a Section 274b Agreement*.

However, there will be no change to Section IV.B, since the references to these procedures is included in the description of the MRB responsibilities and were previously listed in the reference section.

Comment 4:

Page 5, Part V.C, Required Elements for Initiation of Heightened Oversight:

Paragraphs 1 and 2 of this section describe specific assignments, but do not indicate who is responsible for initiating them. The responsibility for the tasks in paragraphs 3 and 4 is implied rather than clearly stated.

Response:

We appreciate this comment, however the format of the STP procedures is such that Section IV covers roles and responsibilities. These roles and responsibilities are not repeated in the guidance section which is consistent with the style of the STP procedures. We believe that NMSS Comment 1 clarified the role of the Agreement State program management and no additional revisions are necessary. There will be no change to the procedure based on this comment.

Comment 5:

Page 6, Part V.D, Optional Elements for the Heightened Oversight Process:

Paragraphs 1, 2 and 3 do not indicate who would be responsible for the initiation of the options described.

Response:

We appreciate the comment, but believe that it is evident that it is the NRC's responsibility for executing the actions in Section V.D.1. and 2. There will be no change to these two paragraphs based on this comment. Section V.D.3. states that there is a mutual responsibility of the Agreement State and NRC to initiate discussions of technical assistance from the NRC. There will be no change to the procedure based on this comment.

Region IV

Comment 1:

Section V. Guidance: A.2 and A.3 appear to be more of a comment rather than guidance. We recommend that the two statements be placed under V.B. Heightened Oversight Criteria.

Response:

We agree with this comment, however with the inclusion of monitoring and reorganization of the procedure, the information in these sections has been captured in other sections of the procedure. Staff will delete the proposed section V.A.1, 2, and 3 and renumber the sections in V.

Comment 2:

Section V. Heightened Oversight Criteria B. 4. We recommend defining "monitoring of Agreement States."

Response:

See response to Region II, Comment 4.

OGC

Comment 1:

Section V.C.1, indicates that the improvement plan "should fully discuss root causes for deficiencies and include short and long-term corrective actions." Since the Appendix does not have examples of this, either this sentence should be revised or the appendix should be revised.

Response:

We agree with this comment and have included the following note at the beginning of Appendix D:

Note: This plan should include root causes for deficiencies and include short- and long-term corrective actions. The sample recommendations in this Appendix were identified by the Agreement State program management as root causes of the program deficiencies based on the IMPEP review. The tasks and milestones identified in the table are the short- and long-term corrective actions proposed by the Agreement State program management.

Comment 2:

Section V.D.1, in the first line, delete "Congressional" and insert "State Legislature."

Response:

The original Section V.D.1 has been deleted. Fiscal concerns such as budgeting and staffing will now be discussed in the letter transmitting the final IMPEP report to senior State management.

Comment 3:

Section V.D.4 should be revised as follows:

~~Contract employees hired by State.~~ Increase resources for the Program.

Radiation control programs may ~~hire~~ need increased resources. Experienced staff might be obtained by hiring contract employees to perform training, licensing and inspection tasks. The contractor may be a current or former employee of ~~another~~ a radiation control program.

Response:

This paragraph has been deleted from the procedure. There will be no change to the procedure based on this comment.

Region III

Comment 1:

General comment. Use "Agreement State" instead of "State" through out the document.

Response:

We agree with the comment and the procedure will be revised as appropriate.

Comment 2:

Section II.B. Revise the paragraph as follows:

To ensure that progress is being made to improve performance of the program relative to the identified areas of weakness, without degradation of other parts of the State's radiation control program.

Response:

We agree with the intent of the editorial comment, however the procedure will be revised as follows:

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 State's radiation control program.

Comment 3:

Section III.A. Revise the second sentence as follows:

In cases where the Commission finds that significant program deficiencies ~~are identified~~ exist regarding the adequacy and/or compatibility of the State's program, several options are available to ensure continued protection of the public.

Response:

We agree with the comment, but will revise the procedure as follows:

In cases where the Commission finds that significant program ~~deficiencies~~ weaknesses ~~are identified~~ exist regarding the adequacy and/or compatibility of the Agreement State's program, several options are available to ensure continued protection of the public.

Comment 4:

Section III.B. Revise this paragraph as follows:

If the deficiencies are serious enough to find such that the NRC determines that the program is inadequate to protect public health and safety, probation, emergency suspension or termination of the Agreement State program is appropriate. If the deficiencies are cause for NRC concern, but are not so serious as to find the such that the NRC had concluded that the program's inadequate to protect public health and safety, either 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.

Response:

We agree that clarification will improve this paragraph. Consistent with the inclusion of monitoring into the procedure and previous changes proposed for the procedure, the staff proposes the following changes:

If the areas needing improvement deficiencies are serious enough to find such that the NRC determines that the program is inadequate to protect public health and safety, probation, emergency suspension or termination of the Agreement State program should be considered is appropriate. If the areas needing improvement deficiencies are not so serious as to find the program inadequate to protect public health and safety, either heightened oversight or monitoring 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.

Comment 5:

Section III.C. Revise this paragraph as follows:

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 allows the NRC to determine if the identified deficiencies in the State's radiation control program are being addresses such that the State will continue to protect public health and safety.

Response:

We believe that this paragraph needed clarification as noted by the comment. The staff will revise this section as follows:

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. Heightened oversight is a formal process which allows the NRC to maintain an increased level of communication with an Agreement State program experiencing significant program weaknesses. It allows NRC to understand 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) based on the results of an IMPEP review, a periodic meeting, or other interaction with the Agreement State program. (See Section V. for criteria).

Comment 6:

Recommend that a Section III.D be added to define monitoring.

Response:

We agree with this comment. See response to Region II, comment 4 for proposed text.

Comment 7:

Section IV.A.1, insert the word “the” before “IMPEP.”

Response:

It is the editorial style of the procedures to not insert “the” before the word “IMPEP.” No change to the procedures based on this comment.

Comment 8:

Section IV.A.2, replace the word “program” with “IMPEP.”

Response:

We agree with this editorial comment and the procedure will be revised.

Comment 9:

Section IV.A.3. Revise this paragraph as follows:

Designates a ~~recommended~~ period of time for the heightened oversight, ~~usually not to exceed one year~~ based on the program deficiencies identified by the IMPEP review.

Response:

We appreciate the comment, but propose moving the time frame information into the guidance section. The staff proposes the following revision based on this approach with additional clarification.

Designates a ~~recommended~~ period of time for the heightened oversight, ~~usually not to exceed one year~~ or monitoring process.

Comment 10:

Section IV.A.4, insert the “IMPEP” after “Follow-up” in the last sentence.

Response:

See response to Region II, Comment 1. We agree with this editorial comment and the procedure will be revised.

Comment 11:

Section IV.A does not discuss the role and responsibilities for the MRB under monitoring.

Response:

We agree with this comment. See response to Region II, comment 4 for proposed text.

Comment 12:

Section IV.A.5. Revise this paragraph as follows:

In the event the Agreement State does not correct the deficiencies that led to the NRC's decision to exercise the heightened oversight option, the MRB will direct the Office of State and Tribal Programs to prepare a Commission paper requesting approval for the appropriate next action of the staff's recommended action, e.g.....

Response:

See the response to NMSS Comment 3. We agree with part of the editorial suggestions offered by Region III, however additional clarifications were made and the revised text can be found in the response to NMSS comment 3.

Comment 13:

Section IV.B.1, replace the word "on" with "subject to."

Response:

We agree with this comment. See response to Region II, comment 4 for proposed text.

Comment 14:

Section V.A.2. Revise this paragraph as follows:

The heightened oversight process is a tool designed to increase communication and interaction with a State regarding its deficient radiation control program experiencing significant program deficiencies. ~~The State must have a strong management~~ As part of the heightened oversight process, the NRC will evaluate the State's commitment to improve the its program for NRC to choose the ~~heightened oversight option.~~

Response:

We appreciate the comment from RIII, but staff proposes deleting this section as duplicative and unnecessary. See response to Region IV, comment 1.

Comment 15:

Section V.A.3. Revise this paragraph as follows:

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

Response:

We appreciate the comment from RIII, but staff proposes deleting this section as duplicative and unnecessary. See response to Region IV, comment 1.

Comment 16:

Section V.B.1. Revise this paragraph as follows:

When a State's radiation control program is considered to be unsatisfactory in one or more of the areas covered by the common and non-common performance indicators, and the deficiencies are of ~~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.

Response:

See the response to Region II, comment 4 for the revised text.

Comment 17:

Section V.B.2. Revise this paragraph as follows:

Heightened oversight decisions may also be based on the results of periodic meetings or other evaluations of an Agreement State's radiation control program. The loss of ~~key~~ State personnel ~~could be a factor~~, such that the State's ability to maintain a viable radiation control program is in question, will be a factor in the decision process.

Response:

See the responses to Region I, comment 3 and Region II, comment 4 for revised text.

Comment 18:

Section V.B.3. Revise the last sentence in this paragraph as follows:

Heightened oversight, in this instance, is a preferred option rather than pursuing probation, or suspension, ~~or termination~~.

Response:

We have deleted this sentences as unnecessary. See the response to Region II, comment 4 for revised text.

Comment 19:

Section V.B.4. Revise this paragraph as follows:

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, but the weakness is not of sufficient magnitude whereby the NRC considers the ability of the program to protect the public health and safety to be degraded. Monitoring may also be considered, after implementation of a program improvement plan, to provide continued assurance

that an Agreement State maintains a fully adequate and compatible radiation control program. Monitoring will be coordinated by the RSAO.

Response:

This section has been revised and clarified based on previous comments. See the response to Region II, comment 4 for revised text.

Comment 20:

Section V.C.1. Revise this section as follows:

1. State radiation program improvement (“get-well”) plan.

This improvement plan should be comprehensive and include actions ~~taken to respond~~ to address the recommendations in the final IMPEP report. It should fully discuss root causes for deficiencies and include short and long-term corrective actions that target the identified root causes. 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.

Response:

We appreciate the comment, but staff will propose the following revision for consistency with the procedure:

- a. State program improvement plan.

~~This~~The program improvement plan should be comprehensive and include actions ~~taken to respond~~ to address the recommendations in the final IMPEP report. It should fully discuss root causes for ~~deficiencies~~ weaknesses and include short- and long-term corrective actions that target the identified root causes. The plan should also contain dates of expected actions, ~~and~~ products and indicate the person(s) responsible for each product. (See Appendix D for an example of a program improvement plan ~~may be found in~~.) The program improvement plan should be submitted to the Chair of the MRB within 30 days of receipt of the final IMPEP report. The program improvement plan will be reviewed by the RSAO and ASPO. Preliminary review results will be discussed at the first conference call. A formal letter from the Chair of the MRB will be sent to the Agreement State acknowledging receipt of the program improvement plan. The letter will include any comments from the review of the program improvement plan.

Comment 21:

Section V.D. Revise the title of this section from “Optional Elements for the Heightened Oversight Process” to “Optional Action by State or NRC for the Heightened Oversight Process.”

Response:

We appreciate the comment, but will revise the title as “Additional ~~Optional Elements~~ Actions for Programs Placed on the Heightened Oversight or Monitoring Process.”

Comment 22:

Section V.D.1. Revise this paragraph as follows:

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

Response:

We appreciate the comment on this section, but this section has been deleted from the procedure. No changes to the procedure based on this comment.

Comment 23:

Section V.D.4. Revise this paragraph as follows:

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

Response:

This paragraph has been deleted from the procedure. There will be no change to the procedure based on this comment.

Comment 24:

Section V.D.5. Revise this paragraph as follows:

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

Response:

With the reorganization of the procedure, this section has been deleted. No change based on this comment.

Comment 25:

Section V.D.6, insert “IMPEP” after “follow-up.”

Response:

With the reorganization of the procedure, this section has been deleted. No change based on this comment.

Comment 26:

Section V.E.1, insert “in paragraph C” after “discussed.”

Response:

With the reorganization of the procedure, this section has been deleted. No change based on this comment.