

SA-106, *The Management Review Board*

Sent to Agreement States for comment July 27, 2005 (STP-05-061); the Regions, NMSS and OGC on August 2, 2005. Minor editorial comments received from the Regions, OGC, and NMSS were made to the procedure, as appropriate, and are not documented in this comment resolution paper.

I. NRC- Region I-comments received 9/7/05 (fax)

Comment 1:

Modify Section I.V. (Roles and Responsibilities) to include the Office of General Counsel as a member of the MRB

Response 1:

The section was revised to include the Office of General Counsel.

Comment 2:

Change the first sentence in sentence in Section I.V.F. (Other NRC Offices) to read: "A representative from another NRC office may...."

Response 2:

We agree with the comment and the section was revised to reflect the change.

II. Region III- comments received 9/12/05

Comment 1

Section III. D. 3., Insert "a particular" before the word "anniversary" as a simple anniversary of the Agreement signing does not warrant a letter of support.

Response 1:

We agree. The section was revised.

Comment 2:

V. B. 4.,The first sentence of this paragraph is incomplete. "...inform the MRB on the results of periodic meetings and other issues associated." Associated with what?

Response 2:

For clarity, "...and other issues associated..." has been deleted from the section, as recommended.

Comment 3:

Appendix B. The title of this Appendix, "Sample letter for expressing NRC's concerns on potential decline in program performance and provide assistance in addressing program issues and improve performance resulting from MRB's consideration of a periodic meeting report," is awkward. How about "Sample letter addressing a potential decline in Agreement State performance noted during a periodic meeting."

Response 3:

We agree with the comment; for clarity, Appendix B's title has been revised to, "Sample Letter Addressing a Potential Decline in Agreement State Performance Noted During a Periodic

Meeting."

Comment 4:

Appendix C. In the third paragraph of this sample letter, modify the second sentence to read "Your program serves as a positive example for radiation control programs in other States and nations."

The sample letter should mention that the Agreement State Program had two (or more) consecutive fully satisfactory IMPEP reviews. See the criteria referenced in Section V. A. 10, that is necessary before we would consider a letter of support.

Response 4:

We agree with the two comments, the sample letter (Appendix C) has been revised.

III. NMSS-comments received 9/14/05

Comment 1:

Page 4, Part V.A: The organization of this section appears to be somewhat awkward, and could be difficult to follow for many readers. A suggested re-formatting of the section is provided as an addendum (see attached).

Response 1:

We agree with comment 1, by using subheadings before the sections, the reader is provided a preview of the text to follow. This is a large section, with various topics of information (e.g. MRB membership, letters of support, meeting IMPEP results), adding headings and subheadings presents the procedure in a more logical format. No change to the text was made. The original NMSS recommendation is contained to as an attachment to this document. Section V., Guidance, was revised, as recommended.

Comment 2:

Page 9, Part V.B.4: The first sentence requires further revision; it currently reads as follows (the paragraph is incomplete as written):

It is the duty of the STP IMPEP project manager to ~~keep the MRB informed on the status~~ coordinate regularly scheduled MRB meetings and inform the MRB on the results of periodic meetings and other issues associated ~~with the in a timely fashion through briefings of periodic meeting summaries.~~

Response 2:

We agree with the comment, Section V.B.4. was revised.

Comment 3:

Page 10, Part VI, and Appendix B: The title of Appendix B is grammatically awkward. As a minimum, the words "Provide" and "Improve" should be changed to "Providing" and "Improving," respectively. Also, the text of the procedure appears to indicate that the potentially applicable

situations for this sample letter are generally one of the three that are listed, rather than all three. A more appropriate expression might be as follows:

“Sample Letter for {Expressing NRC’s Concerns on Potential Decline in Program’s Performance / Providing Assistance in Addressing Program Issues / Improving Performance Resulting from MRB’s Consideration of a Periodic Meeting Report}”

Response 3:

We agree with comment 3. Region III also had a similar comment on the length of title. The title has been revised for clearer reading.

IV. OGC-comments received 9/22/05

All OGC comments submitted were non-substantive, editorial and minor. SA-106 was revised to include OGC’s recommendations but because the recommended changes were minor, focusing on punctuation, they were not individually addressed in this paper.

NMSS RECOMMENDED FORMATTING OF SECTION V.A., SA- 106, *The Management Review Board*

ADDENDUM - Suggested re-formatting of Section V. A. Paragraphs have been rearranged and renumbered, with some subheadings, but no words were changed within the paragraphs.

V. GUIDANCE

A. MRB

1. Membership and Meeting Policy

- a. The MRB membership consists of senior NRC managers, or their designees, representing the DEDMRS; the offices of Nuclear Material Safety and Safeguards (NMSS); State and Tribal Programs (STP); General Counsel; and an Agreement State Liaison to the MRB. A quorum for an MRB meeting consists of at least three voting members of the MRB. Designees count as part of the quorum.
- b. MRB meetings are to be conducted approximately 74 days from the last day of the IMPEP review in order to issue the final report within 104 days. Although these meetings are exempt from the "Commission Policy Statement on Staff Meetings Open to the Public," the public is invited to observe each meeting. Each meeting will be published in the weekly notice of "NRC Meetings Open to the Public." MRB meetings may take place beyond the 74th day in order to assemble a quorum to accommodate Agreement State/Regional schedules, and/or to incorporate important supplemental material. However, every effort should be made by STP and NMSS to meet the timeliness goal for issuing the final reports in 104 days.

2. Meeting Protocols

- a. The MRB Chair consults with other MRB members to reach a consensus position on each indicator and, if necessary, provides specific instructions to the IMPEP team leader. If a consensus is not apparent, a vote is taken and a simple majority decides the MRB's position about report revisions.
- b. In some instances, the overall program adequacy finding and, for Agreement States, the compatibility finding, may not be possible at the time of the MRB meeting. In those cases, a report is issued to the Region or Agreement State within the goal of 104 days that addresses both completed review findings and the status of outstanding issues. A report supplement will be issued when the outstanding areas are resolved by the MRB.

Attachment

- c. The MRB may choose to go into an executive session during the public

meeting at the discretion of the MRB Chair. For all matters that require a formal vote by the MRB, the vote will take place during the public meeting, regardless of whether the topic was discussed in an executive session or not.

3. Actions deriving from MRB recommendations and review team findings
 - a. If the MRB recommends that an Agreement State be placed on heightened oversight, the guidance in STP Procedure SA-122, Heightened Oversight and Monitoring, should be followed.
 - b. If a finding of “Adequate, But Needs Improvement” is made of a Region, the MRB (including the Director, NMSS) will consult with the Executive Director for Operations to determine what remedial steps need to be taken and will inform the Commission accordingly. Program probation, suspension, and termination which will be considered when an “Adequate, But Needs Improvement” finding is made for an Agreement State Program are not applicable to Regional programs. NRC must implement immediate action to correct Regional program deficiencies that are similar to those that would warrant probation, suspension, or termination actions for an Agreement State.
 - c. If the MRB recommends that NRC initiate proceedings to place an Agreement State program on probation, STP Procedure SA-113, Placing an Agreement State on Probation, should be followed.
 - d. If the MRB recommends that NRC initiate proceedings to suspend an Agreement State program, STP Procedure SA-114, Suspension of a Section 274b Agreement, should be followed.
 - e. If the MRB recommends that NRC initiate proceedings to terminate an Agreement State program, STP Procedure SA-115, Termination of a Section 274b Agreement, should be followed.
4. Letters of Support
 - a. The MRB may direct the NRC to issue a “letter of support”, upon receipt of a request from a State Program Director. In such a case, the State Program Director may view that their program is experiencing decline, unable to replace staff, or believes NRC’s support is needed to help the program to effectively compete for Department resources. A State submitted request, will be considered for a “letter of support” provided:
 - i. the request is submitted to the MRB in writing.
 - ii. the purpose of the request for “ letter of support” is clearly identified.
 - iii. the request contains a detailed description of the program performance issues, including an assessment of the performance

indicator(s), that the State Program Director considers will result in less than a satisfactory rating if the IMPEP criteria are applied.

- iv. the request contains a “Staff Needs Analysis”, performed as described in SA-700, “Processing an Agreement” where staffing issues are addressed.
 - v. the request includes a description of the efforts made by the program to address the performance issues.
- b. The MRB will consider the request at its next regularly scheduled meeting, or sooner, if warranted. The State Program Director should be available to discuss the request with the MRB during the meeting.
- c. The MRB will determine if a “letter of support” (see sample letter, Appendix B) is warranted based on the following criteria:
- i. the performance issues are significant enough to warrant either heightened oversight or monitoring as stated in SA-122, “Heightened Oversight and Monitoring;”
 - ii. the root cause of issues in performance areas needing improvement are budget and staffing issues which may need senior level management attention; or
 - iii. one or more performance indicators have the potential to result in an unsatisfactory rating if the IMPEP criteria are applied.

5. Special Recognitions

- a. If a State has been found satisfactory for all performance indicators during two consecutive IMPEP reviews, the letter for transmitting the final IMPEP review will include language such as commending the State for consistently meeting the standards of performance in all program areas or for the State’s continued support in protecting public health and safety (see sample letter, Appendix C). The MRB will issue such letters to recognize a program’s good performance and express appreciation for their contribution to ensure protection of public health and safety.
- b. The MRB may also issue a letter of support to congratulate a State during special occasions such as achieving a milestone or celebrating the anniversary of the Agreement signing (see sample letter, Appendix D).