

SUMMARY OF COMMENTS ON SA-113, "Placing an Agreement State on Probation"

I. Sent to the Agreement States for Comment: July 15, 2005 (STP-05-054)

Comments/Dated: Minnesota - 7/22/05 (e-mail)
Iowa - 7/28/05 (e-mail)
Illinois - 8/11/05 (e-mail/letter)

Response to/Resolution of Comments:

Minnesota

Comment:

In Section III, "serious program deficiencies" becomes "serious program weaknesses." However, the word "serious" appears only a few times in the subsequent sections. Furthermore, the template in Appendix A uses the word "significant" rather than serious."

Replacement of deficiencies throughout the entire text changes the evaluation process from an objective to a subjective review. Therefore, to retain a semblance of objectivity, I submit that total replacement is inappropriate. Specifically, on page 5, the word "deficiencies" in the paragraph 1 and 3 should not be changed. These items are can be objectively evaluated and need no subjective reference. In addition, unlike paragraph 2 in the same section, these items are not necessarily programmatic weaknesses.

Response:

In order to eliminate subjectivity yet retain flexibility, we have removed all instances of "serious" and "significant" as modifiers to "program weaknesses" and simply refer to "program weaknesses" as they relate directly to the adequacy and compatibility of the program. "Serious program weaknesses" may actually be grounds for action by the NRC above and beyond probation. We believe that replacement of the word "deficiency" is necessary since a true program deficiency may also be grounds for NRC action above and beyond the scope of probation.

Iowa

Comment:

The first section, A, is "Minimum Criteria for Considering Probation." Of the nine paragraphs, of which the major ones are denoted "A, C, D, E, F," in that section fully five of them contain only philosophy and background material. The remaining four provide a little more specificity, but I could not apply the equation: Situation (1) + Situation (2) + ... + Situation (n) = Probation.

Response:

Because of the flexibility of the program, as well as the variety of potential weaknesses and State responses to the weaknesses, it is impossible to provide an equation as to what situations require probation. In order to alleviate some potential confusion the section described in the above comment has been renamed to "Process for Considering Probation."

IllinoisComment 1:

The details of the criteria on page 5 need to be re-defined. Items 2-4 on this page do not warrant heightened oversight. Only states that have serious health and safety weaknesses or deliberate misconduct that affects health and safety (i.e., doses or release/loss of material under Part 20 Subpart M) that were not investigated should be placed on probation. Certainly backlogs of renewals/inspections or compatibility issues should not be considered for probationary status. In addition, deliberate misconduct was mentioned on page 4 as a potential criterion but not on page 5.

Response:

Section V.B, "Details of the Criteria," is not intended to provide exact criteria that warrants probation. This section merely provides instances that may trigger probation if the weaknesses directly affected the adequacy or compatibility of a program. The Management Review Board has the option of recommending probation at their discretion. The specific examples have been removed from this Section to eliminate the pre-determination of instances that may trigger probation. Other phrases in this Section have also been revised to reflect that probation is an only an option and not required under any of the instances mentioned in this Section.

Comment 2:

The program improvement plan looks suspiciously similar to the plan for heightened oversight. We recommend leaving the probation improvement plan as it is written and developing a less restrictive improvement plan for heightened oversight. Have the same oversight plan for both makes no sense if one infraction is more serious than the other.

Response:

The Program Improvement Plan for probation and heightened oversight are identical. We believe that the Program Improvement Plan, as is, is necessary for both forms of oversight. We do not feel that a less restrictive version of the plan developed specifically for heightened oversight would be as useful of a tool to both the NRC and the Agreement State as the current version is. No change will be made to the procedure based on this comment.

II. Sent to the NRC Offices for Comment: July 15, 2005

Comments/Dated: OGC - 8/05 (mark-up)
Region I - 7/25/05 (e-mail)
Region IV - 8/1/05 (e-mail)
NMSS - 8/22/05 (memo)

OGC

All comments were editorial in nature and the procedure was revised accordingly.

Region I

Comment 1:

Under Section IV, "Roles and Responsibilities," add sections for Regional Administrator, RSAO and ASPO since these individuals have responsibilities described elsewhere in the procedure.

Response:

Under Section IV, responsibilities have been added for the Regional State Agreements Officer (RSAO) and Agreement State Project Officer (ASPO) since these individuals have responsibilities described in other sections of the procedure. Direct references to the Regional Administrator have been removed from the document; therefore, responsibilities for the Regional Administrator do not appear in Section IV.

Comment 2:

Section V.A.2, "Guidance, Minimum Criteria for Considering Probation." This section indicates that the MRB may decide to place an Agreement State on probation based on the results of a special review. Based on recent uncertainty regarding the form of the writeup for the NRC's on-site visit for the California, it would be helpful if the procedure provided additional guidance as to the content and/or form that the report should take for to document the special review.

Response:

This procedure will not address the details of "special reviews" as they are mentioned in other procedures as well. STP will consider the need to develop a procedure that focuses solely on special reviews. No change was made to the procedure as a result of this comment.

Comment 3:

Section V.D.1, "Guidance, Required Elements of Probation." Based on recent experience with the California special review of the State's Program Improvement Plan (PIP), there was confusion on the State's part if the PIP was approved, or had deficiencies that require resubmittal. The procedure should indicate NRC's position (approve, disapprove, etc.) beyond just acknowledging the receipt of the PIP and provide comments.

Response:

We agree with this comment and the procedure has been revised accordingly.

Region IV

Comment:

Under Section IV, "Roles and Responsibilities," some of the subtitles use "The" to start the title while other have deleted the "The." Recommend consistency in the subtitles.

Response:

We agree with the comment and the procedure has been revised accordingly.

NMSS

Comment 1:

Section II.A, page 1: The reference to NRC staff may not be sufficiently inclusive, given that the EDO and the Commission also have responsibilities as stated later in the procedure.

Response:

We agree with this comment and the procedure has been revised accordingly.

Comment 2:

Section IV.A.5, page 2: It is recommended that the word “efficiency” be replaced by “adequacy.”

Response:

We agree with this comment and the procedure has been revised accordingly.

Comment 3:

Section IV.A.5, page 2: The role of the MRB described in this section is not, strictly speaking, concerned with the Probation process. It may be preferable to include the examples in section IV.A.4, along with a reference to STP Procedure SA-122, or to move them to Section V.B, page 5 (removing any duplicates).

Response:

We believe that the role described in this paragraph does relate directly to probation. Although the paragraph relates more directly to the heightened oversight process, we believe that this paragraph is necessary to promote consistency and continuity among STP procedures. This paragraph has been revised slightly in response to other comments.

Comment 4:

Section V.A.1, page 4: It is recommended that the last portion of this paragraph be rewritten as follows:

“...to recommend to the Commission that the Agreement State be placed on probation.”

Response:

We agree with this comment and the procedure has been revised accordingly.

Comment 5:

Section V.A.3, page 4: Normally the Director of NMSS participates in MRB meetings. Is the omission of NMSS intentional? (It was also noted that the references to NMSS have been stricken in Section V.D, page 8.)

Response:

The composition of the Management Review Board (MRB) is detailed in STP Procedure SA-106. We did not feel it was necessary to repeat the composition of the MRB in this procedure. The Director of NMSS still maintains his/her role on the MRB. The deletion of the reference to NMSS in Section V.D. was to eliminate NMSS from the review of the Program Improvement Plan for a State on Probation. STP will have the sole responsibility for the review and acceptance for the review of the Program Improvement Plan; however, STP may request

technical assistance or technical expertise from other Offices on an as needed basis. No change was made to the procedure based on this comment.

Comment 6:

Section V.B.1-4, page 5: Several agreement states have not met circumstances related to programmatic weaknesses for a significant period; e.g., repeatedly late in adopting required compatibility elements, inability to retain staff, etc. If we are not implementing these criteria, should we look for others?

Response:

Please see the response to Illinois Comment 1.

Comment 7:

Section V.D, page 6: This section, which is entitled "Required Elements of Probation," contains the words "should," "will," and "may," which are sometimes used in ways that might not have been intended. Given that some of the items discussed in this section are not actually required, it may be appropriate to drop the word "Required" from the section title. It may be helpful to review this section to determine whether the form of the verb is as intended in each case. Also, it is not clear what value is added by the words "should be comprehensive" in the first line of V.D.1.a.

Response:

We agree with this comment and the procedure has been revised accordingly.

Several editorial comments were made. All of which were incorporated into the procedure.