FSME Procedure Approval

Placing an Agreement State on Probation

SA-113

Issue Date:

Review Date:

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NOTE
These procedures were formerly issued by the Office of State and Tribal Programs (STP). Any changes to the procedure will be the responsibility of the FSME Procedure Contact as of October 1, 2006. Copies of the FSME procedures will be available through the NRC website.

	Procedure Title: ***Placing an Agreement State on Probation*** ***Procedure Number: SA-113***	**Page: 1 of** **Issue Date:**

I. INTRODUCTION

This procedure describes the process used by the Nuclear Regulatory Commission (NRC) when placing an Agreement State program on probation.

II. OBJECTIVES

A. To provide the guidelines that will be followed by ~~the~~ NRC 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 probation.

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 State's radiation control program.

C. To ensure an Agreement State on probation understands the process, its role, and any actions expected of the program.

D. To monitor the progress of an Agreement State in restoring the radiation control program's performance to the criteria identified in Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP).*

III. BACKGROUND

A. Section 274j. of the Act gives the Commission authority and responsibility for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with NRC's program. In cases where the Commission finds that program weaknesses exist regarding the adequacy and/or compatibility of an Agreement State's program yet the weaknesses 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 public health and safety is to place the Agreement State on probation. Probation is also an option when an Agreement State on Heightened Oversight has not addressed program weaknesses identified in previous reviews during the period of Heightened Oversight (see ~~STP~~FSME Procedure SA-122, *Heightened Oversight and Monitoring*, for details on Heightened Oversight).

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 probation for program weaknesses regarding the adequacy and/or compatibility of an Agreement State program (see Sections F. through H. of policy statement).

C. Probation is a formalized process, requiring Commission approval and notification to the Agreement State's governor, ~~which~~that allows ~~the~~ NRC to maintain an increased level of communication with an Agreement State program experiencing program weaknesses regarding the adequacy and/or compatibility of the program. The process allows ~~the~~ NRC to ~~understand~~monitor the actions being taken by the State to correct the identified weaknesses and the implementation schedule for those actions.

IV. ROLES AND RESPONSIBILITIES

A. Management Review Board (MRB):

1. Considers the results of Agreement State reviews under the Integrated Materials Performance Evaluation Program (IMPEP) and makes the final determination of the adequacy and compatibility of Agreement State programs (see ~~STP~~FSME Procedure SA-106, *The Management Review Board*, for additional information on the MRB).

2. Recommends to the Commission to place an Agreement State on probation when program weaknesses regarding the adequacy and/or compatibility of the program are identified during an IMPEP review.

3. Evaluates special reviews of Agreement State programs conducted to assess a specific program weakness or weaknesses identified during periodic meetings or other interactions with Agreement State programs.

4. Considers improvements made by an Agreement State program and the resolution of action items from the Agreement State's Program Improvement Plan (see Section V.D.1. for more information on the Program Improvement Plan) to determine if a recommendation should be made to the Commission to lift the probationary status.

5. Evaluates the adequacy of an Agreement State's actions during a period of Heightened Oversight. If a programmatic weakness or weaknesses continue uncorrected throughout the period of Heightened Oversight, the MRB may elect to make a recommendation to the Commission to place the Agreement State on probation.

B. ~~Executive Director for Operations (EDO)~~Chair of the MRB:

Submits the Commission Paper containing the MRB's recommendation that ~~the~~ NRC initiate the proceedings to place an Agreement State program on probation or to lift the probationary status of an Agreement State program.

C. Director, ~~Office of State and Tribal Programs (STP)~~Division of Materials Safety and State Agreements (MSSA):

1. Prepares and coordinates the Commission Paper recommending an Agreement State program be placed on probation or an Agreement State program's probationary status be lifted.

2. Coordinates the review of the Agreement State's Program Improvement Plan.

3. Coordinates all probation notifications (i.e., to the Governor, to the State's Congressional delegation, to the appropriate Congressional committees, to the *Federal Register* ~~Notice~~, to all of the Agreement State's licensees, and to all Agreement and Non-Agreement States).

4. Coordinates with NRC's Office of Public Affairs (OPA) on the issuance of a press release announcing the probationary status of the Agreement State program.

~~4~~5. Coordinates follow-up IMPEP reviews of Agreement State programs on probation.

D. ~~Director, Office of Congressional Affairs (OCA):~~

~~Notifies the appropriate Congressional committees and members of the Agreement State's Congressional delegation of the probationary status of the Agreement State program.~~

~~E. Director, Office of Public Affairs (OPA):~~

~~Issues a press release announcing the probationary status of the Agreement State program.~~

~~F.~~ Regional State Agreements Officer (RSAO):

1. Leads and coordinates probation activities with the Agreement State program management and other NRC staff.

2. Reviews and comments on the Program Improvement Plan submitted by an Agreement State on probation.

~~3. Prepares and coordinates draft agendas for each probation conference call with the Agreement State program management and other NRC staff.~~

~~4~~3. Prepares minutes of all conference calls relating to the probation period, and coordinates the minutes with the Agreement State program management and other NRC staff to ensure a clear understanding of discussions was recorded.

~~5~~4. Participates, as a team member, on followup IMPEP reviews.

~~G~~E. ~~Agreement State Project Officer (ASPO)~~Office of Federal and State Materials and Environmental Management Programs (FSME) Designee:

1. Participates, in coordination with the RSAO, in probation activities.

2. Participates in conference calls for assigned States.

3. Reviews and comments on the Program Improvement Plan submitted by an Agreement State on probation.

V. GUIDANCE

A. Process for Considering Probation

1. If the MRB identifies program weaknesses regarding the adequacy and/or compatibility of the Agreement State's program, but does not find the weaknesses so serious as to find the program inadequate to protect public health and safety, one of the options available to ensure continued protection of public health and safety is to recommend to the Commission placing the Agreement State on probation.

2. The MRB may decide to recommend placing an Agreement State program on probation based on the results of an IMPEP review, special review, or other interaction with the State. Major programmatic changes or evidence of poor program performance identified during a periodic meeting or other interaction with an Agreement State program may warrant the need for a special review to be conducted. A 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 determining the need for a special review.

3. If the MRB determines probationary status is warranted, a meeting to discuss NRC concerns may be conducted by appropriate NRC representatives with ~~the responsible cabinet-level~~ senior State officials~~ of the Agreement State~~.

4. If it is the final recommendation of the MRB that ~~the~~ NRC place the Agreement State program on probation, ~~STP~~MSSA will prepare and coordinate the Commission Paper. The Commission Paper will contain the status of the Agreement State program, the MRB's recommendation, and any other pertinent information. The Commission Paper will be coordinated with the Offices represented on the MRB and the Region in which the Agreement State is located.

5. If the Commission approves the MRB's recommendation, the Agreement State program will be placed on probation.

B. Details of the Criteria

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

1. When weaknesses in one or more of the common and non-common performance indicators of an IMPEP review are found unsatisfactory and are of such safety significance that assurance of the program's ability to protect public health and safety may be degraded and increased oversight by ~~the~~ NRC is required to ensure program improvements.

2. When programmatic weaknesses have gone uncorrected for a significant period of time and ~~the~~ NRC is not confident of the Agreement State's ability to correct such weaknesses in an expeditious and effective manner without increased oversight by ~~the~~ NRC.

3. When a program has repeatedly been late in adopting required compatibility elements and increased oversight by ~~the~~ NRC would yield improvements.

4. When a program has remained on Heightened Oversight for a significant period of time and the results of an IMPEP review or other interaction with the Agreement State reveal that there has been little progress in achieving milestones identified in the State's Program Improvement Plan or addressing recommendations made during previous IMPEP reviews.

C. NRC Activities upon Commission Approval of Action

1. A letter to the Governor notifying him or her of the Agreement State program's probationary status will be sent (See Appendix A for a sample letter to the Governor of [State] probation). A copy of the letter will be placed in ~~the~~ NRC's Agencywide Document Access and Management System (ADAMS). ~~STP~~MSSA will draft the letter for the Chairman's signature and include it as an attachment to the Commission Paper recommending probation. The Chairman should discuss the letter with the Governor by telephone before it is mailed.

2. ~~STP~~MSSA will prepare and dispatch a letter to the Agreement State radiation control program director requesting that the Agreement State develop a Program Improvement Plan and submit it to the Chair of the MRB within 30 days of receipt of the letter.

3. Notice of the probationary status of the Agreement State program will be published in the *Federal Register* (see Appendix B for a sample *Federal Register* Notice).

4. ~~STP~~MSSA 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~~ MSSA will coordinate with OPA to issue a press release.

6. ~~STP~~MSSA will coordinate with NRC's Office of Congressional Affairs ~~in order~~ to notify the appropriate Congressional committees and members of the Agreement State's Congressional delegation.

D. Elements of Probation

1. State Program Improvement Plan

   a. The Program Improvement Plan ~~(Plan)~~ must include actions to address the recommendations in the final IMPEP report. It must fully discuss root causes for weaknesses and include short- and long-term corrective actions that target the identified root causes. The Program Improvement P~~p~~lan must contain dates of expected actions, detail the products to be developed or implemented, and indicate the person(s) responsible for each product. (See Appendix ~~D~~B of ~~STP~~FSME Procedure SA-122, *Heightened Oversight and Monitoring*, for an example of a Program Improvement Plan.) The Program Improvement Plan will be reviewed by the responsible RSAO and ~~ASPO~~the FSME Designee. 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 and approval/disapproval of the Plan. The letter will also include any comments from the review of the Plan.

   b. ~~The~~ NRC and the Agreement State program manage~~ment~~rs may meet to discuss the Program Improvement Plan, comment, and subsequently agree with the milestones. This meeting may determine the projected duration of the probationary period. Normally, the probationary period will be ~~one~~1 year or less, but may be extended based on extenuating circumstances.

2. 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 ~~two~~2 weeks before the next scheduled conference call.

3. Periodic NRC/State conference calls.

   a. These calls are designed to maintain open communications between the Agreement State and NRC. The calls will involve Agreement State manage~~ment~~rs responsible for improving the program and the IMPEP team leader, the ~~ASPO~~FSME Designee, the RSAO, and other NRC or State staff, as needed.

b. ~~A draft agenda, coordinated with Agreement State management and NRC staff, will be prepared by the RSAO and distributed at least one week prior to the call.~~

~~c.~~ The periodic calls normally will occur at least bimonthly, unless directed otherwise by the MRB.

~~d. As elements of the Plan are completed by the Agreement State, the accomplishments will be noted in the conference call summaries and need not be included in future State progress reports.~~

4. Followup IMPEP review

a. The MRB will determine when a followup IMPEP review will be performed to evaluate State progress in resolving weaknesses. Normally, the followup review will occur ~~one~~1 year after the original review that commenced the probationary period. (See ~~STP~~FSME Procedure SA-119 for additional information on followup reviews.)

b. The results of a followup IMPEP review may be the basis for the MRB's decision to recommend to the Commission discontinuation of probation or further action against the Agreement State.

i. If the MRB finds the Agreement State program is satisfactory for all performance indicators, the MRB should recommend discontinuation of the probationary period. Based on the results of the review and the information obtained during the MRB meeting, the MRB should determine if additional oversight of a lesser degree, such as Heightened Oversight or Monitoring, is necessary to ensure the stability of the Agreement State program and its improvements.

ii If the MRB finds the Agreement State program is improving and resolving the recommendations from the last IMPEP review; however the program is still found satisfactory, but needs improvement, ~~in~~for one or more performance indicators, the MRB should recommend discontinuation of the probationary period and placing the Agreement State on Heightened Oversight or Monitoring.

iii. If the MRB finds the Agreement State program is not improving or resolving the recommendations from the last IMPEP review in a timely manner and the program is found unsatisfactory for one or more performance indicators, the MRB may elect to recommend continuation of the probationary period or may direct ~~STP~~MSSA to prepare a Commission paper requesting approval for an appropriate next action, which may include suspension or termination of the Agreement (see ~~STP~~FSME Procedure SA-114, *Suspension of a Section 274b. Agreement* and ~~STP~~FSME Procedure SA-115, *Termination of a Section 274b. Agreement*).

E. Additional Actions for Programs on Probation

1. NRC/State management meetings

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

2. NRC technical assistance

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

F. Discontinuation of Probationary Status

1. Once all items in the Plan have been executed and deemed closed based on the results of an IMPEP review of the Agreement State's actions, the MRB may convene to review improvements and may consider recommending to the Commission to lift the probationary status. The MRB may find it more beneficial to hold the discussion of the completion of the Plan so it coincides with the MRB meeting for the followup review.

2. If the MRB determines that the Agreement State has fulfilled the commitments in the Plan and the MRB is satisfied with the performance of the Agreement State program based on the results of an IMPEP review, the MRB should recommend to the Commission that the probationary status be lifted.

3. In the event that the Agreement State does not complete the actions identified in the Plan within a reasonable time period and extenuating circumstances do not exist, the MRB should consider whether the Agreement should be suspended or terminated.

4. ~~STP~~MSSA will be assigned the lead for preparation and coordination of the Commission Paper containing the MRB's recommendation. The Commission Paper will include the current status of the Agreement State program, the recommendation of the MRB, and any other pertinent information supporting the MRB's decision. The Commission Paper will be coordinated with the Offices represented on the MRB and the Region in which the Agreement State is located.

5. If the Commission approves lifting the probationary status, notification of such change will be made following the same process outlined in Section V.C.1-6 above.

6. If the Commission approves further action against the Agreement State, the process and guidelines in ~~STP~~FSME Procedure SA-114, *Suspension of a Section 274b. Agreement* or ~~STP~~FSME Procedure SA-115, *Termination of a Section 274b. Agreement* will be followed.

VI. APPENDIXES

Appendix A - Sample Letter to the Governor of [State] Probation
Appendix B - Sample *Federal Register* Notice

VII. REFERENCES

1. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.
2. NRC Management Directive 5.7, *Technical Assistance to Agreement States.*
3. *Statement of Principles and Policy for the Agreement State Program*, dated September 3, 1997.
4. ~~STP~~FSME Procedure SA-106, *The Management Review Board*.
5. ~~STP~~FSME Procedure SA-114, *Suspension of a Section 274b. Agreement*.
6. ~~STP~~FSME Procedure SA-115, *Termination of a Section 274b. Agreement*.
7. ~~STP~~FSME Procedure SA-119, *Followup IMPEP Reviews*.
8. ~~STP~~FSME Procedure SA-122, *Heightened Oversight and Monitoring*.

VIII. 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 NRC's Agencywide Documents Access and Management System (ADAMS) are listed below.

No.	Date	Document Title/Description	Accession Number
1	11/24/00	STP Procedure SA-113	ML010180096
2	7/15/05	STP-05-054, Opportunity to Comment on Draft Revision to STP Procedure SA-113	ML051990496
3	5/16/06	STP-06-046, Final STP Procedure SA-113	ML061380780
4	5/16/06	STP Procedure SA-113	ML061430106
5	5/16/06	STP Procedure SA-113 (redline/strikeout)	ML061430118
6	5/16/06	Summary of Comments on SA-113	ML040620654

Appendix A

Sample Letter to the Governor of [State] Probation

Dear Governor [Name]:

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

The last review of the [State] radiation control program found program weaknesses related to the adequacy and/or compatibility of your Agreement State program. Correction of these weaknesses is necessary to provide adequate protection of 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 probation. 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 "Program Improvement Plan" describing actions to be taken to address the identified weaknesses, including specific goals and timetables. NRC staff will work with your staff throughout the probationary period. Normally, the probationary period is approximately one year, but it could be extended based on extenuating circumstances. Once the Commission determines that the commitments in the "Program Improvement Plan" have been met and that the radiation control program has demonstrated significant improvements in program performance, the probationary status will be lifted.

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 Federal and State Materials and ~~Tribal~~Environmental Management Programs, at [telephone number].

Sincerely,

Chairman

cc: [SLO]
[RCPD]

Appendix B

Sample *Federal Register* Notice

Placement of State Radiation Control Program on Probation

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

ACTION: Notice of State Radiation Control Program Being Placed on Probation

SUMMARY:

NRC is announcing the placement of the [State] radiation control program for regulation of certain Atomic Energy Act materials on probation and initiating increased NRC oversight of the program, as well as overseeing implementation of a "Program Improvement Plan" developed by the staff of the [State] radiation control program. Once the radiation control program has met the commitments made in the "Program Improvement Plan," and has demonstrated significant improvements in program performance, the probationary status will be lifted. There will be further announcements of that action.

FOR FURTHER INFORMATION CONTACT:

[~~STP~~ Contact], Office of Federal and State Materials and ~~Tribal~~Environmental Management 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 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 probation for program weaknesses that require increased 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 probation. [Narrative of the MRB findings].

The State has been requested to develop a "Program Improvement Plan" and submit it to the NRC within 30 days. The plan should describe actions taken by the State to address weaknesses, including specific goals and milestones. The Commission expects that the

probationary period will be one year or less, but could be extended based on extenuating circumstances.

Once the MRB determines that the Agreement State has met the commitments in the "Program Improvement Plan" and has demonstrated significant improvements in program performance, a recommendation will be made to the Commission that the probationary status be lifted. Upon Commission approval, the probationary status will be lifted. Notification of discontinuance of probation will be made to the Agreement State's Governor, the Agreement State's Congressional delegation, and all other Agreement and Non-Agreement States. ~~The~~ NRC will also publish a *Federal Register* Notice and a press release announcing the discontinuance of probation for [State].