February 24, 2010

SUMMARY OF COMMENTS ON SA-113, *PLACING AN AGREEMENT STATE ON PROBATION*, AND SA-122, *HEIGHTENED OVERSIGHT AND MONITORING*

I. Sent to the Agreement States for Comment: July 23, 2009 (FSME-09-058)

Comments/Dated: Organization of Agreement States – 8/10/09 (letter - no comments)

II. Sent to the NRC Offices for Comment: July 23, 2009

Comments/Dated: Region IV - 8/13/07 (e-mail - no comments)
Region I - 8/21/09 (e-mail - no comments)
OGC - 9/3/09 (markup)
DILR - 9/3/09 (e-mail)
Region III – 9/7/09 (e-mail)

Office of General Counsel (OGC)

Comment 1:
SA-113; Section II., Objectives; Paragraph A.:

> To provide the guidelines that will be followed by NRC when considering whether to exercise the authority contained in Section 274j.(~~2~~1) of the Atomic Energy Act (Act), as amended, to place an Agreement State program on probation.

Response:
The procedure was revised to read "…the authority contained in Section 274j. of…" to be more encompassing of the authority in the Act.

Comment 2:
SA-113; Section III., Background; Paragraph A.:

> Section 274j.(1) 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 FSME Procedure SA-122, *Heightened Oversight and Monitoring*, for details on Heightened Oversight).

Response:
No change was made to the procedure as a result of this comment. See response to Comment 1 above.

Comment 3:
SA-122; Section IV., Roles and Responsibilities; Paragraph D.; Subparagrah 2:

> Prepares minutes of all conference calls relating to the heightened oversight or monitoring process and coordinates the review of the minutes with the Agreement State program management and other NRC staff to ensure that a clear understanding of discussions were recorded. (See Appendix A for a sample conference call summary.)

Response:
The procedure was revised accordingly.

Comment 4:
SA-122; Section V., Guidance; Paragraph B.; Subparagrah 1:

> Monitoring of an Agreement State program may be appropriate if heightened oversight is not warranted, but a program performance weakness is identified during an IMPEP review~~,~~ or a periodic meeting, or in other information provided by an Agreement State program.

Response:
The procedure was revised based on this comment.

Comment 5:
SA-122; Section V., Guidance; Paragraph B.; Subparagrah 3; Bullet b.; subbullet ii.:

> If the MRB finds the Agreement State program is improving and resolving the recommendations from the last IMPEP review ~~but is satisfactory~~, but needs improvement~~,~~ in one or more performance indicators, the MRB should consider taking the State off of heightened oversight and placing the State on monitoring.

Response:
No change was made to the procedure as a result of this comment.

Comment 6:
SA-122; Section V., Guidance; Paragraph D.; Subparagrah 1:

> If ~~the~~a underlying cause of program weaknesses identified during the IMPEP review is determined to be fiscal concerns, the MRB may direct staff to include additional language in the cover letter for the final IMPEP report to bring these issues to the attention of Agreement State senior management. Fiscal concerns include budget, staffing, and resource concerns. Communication with Agreement State senior management may facilitate necessary actions to address the fiscal concerns affecting the Agreement State radiation control program.

Response:
The procedure was revised based on this comment.

Comment 7:
SA-122; Section V., Guidance; Paragraph D.; Subparagrah 2:

> If the MRB decides to place a State on heightened oversight or monitoring (or continue the State program on heightened oversight or monitoring), the MRB may consider the issuance of a letter from the Chairman or the Executive Director of Operations (EDO) to the State Governor to communicate NRC's concerns about the program. In this case, Agreement State executive- and legislative-level knowledge of performance issues faced by a program may ~~bring attention to necessary action and~~result in the State making additional resources ~~needed~~available to address performance weaknesses. Additionally, the letter could assist in helping the Governor better understand the importance of the Agreement between NRC and the State, the status and value of the State's radiation safety program, and help in maintaining internal State focus on the need to provide adequate funding for the Program. A letter addressed to the Governor would usually be signed by the Chairman, and be provided to the Commission for review and approval. A sample letter to the State Governor is provided in Appendix C.

Response:
The procedure was revised accordingly.

Division of Intergovernmental Liaison and Rulemaking (DILR)

Comment 1:
SA-122, Page 5 (V)(B)(1)-The sentence may need revising. **Suggestion** Monitoring of an Agreement State Program maybe be appropriate if a program performance weakness is identified during an IMPEP review, a periodic meeting, or other information provided by an Agreement State program and heightened oversight is unnecessary.

Response:
This sentence was revised as a result of a comment from OGC (OGC Comment 4) to enhance readability. No change was made to the procedure as a result of this comment.

Comment 2:
SA-122, Page 8 (D)(3)-Regional State Agreements Officer should not be stricken.

Response:
Regional State Agreements Officer was not stricken in this paragraph. It was abbreviated to RSAO, as it was previously defined in Section IV, Roles and Responsibilities. No change was made to the procedure as a result of this comment.

Comment 3:
Page 9-REFERENCES Number 4 has been stricken and should be relabeled as a '3.'

Response:
All reference numbers are correct. No change was made to the procedure as a result of this comment.

Region III

Region III provided editorial comments on SA-122; all of which were incorporated into the procedure.