March 9, 2011

SUMMARY OF COMMENTS ON SA-114,
SUSPENSION OF A 274b. AGREEMENT

I. Sent to the Agreement States for Comment: November 8, 2010 (FSME-10-093)

Comments/Dated: Organization of Agreement States--12/09/10 (e-mail)

Organization of Agreement States (OAS):

Comments:
OAS made several grammatical, typographical and editorial comments.

Response:
We agree with some of the comments. The procedure was revised accordingly.

II. Sent to the NRC Offices for Comment: November 10, 2010

Comments/Dated: Region I – 11/26/10 (e-mail)
Region IV - 12/07/10 (e-mail)
DWMEP/FSME – 12/03/10 (e-mail)
OGC – 11/23/10 (e-mail)
FSME staff- 11/17/10 (e-mail)

Region I:

No comments

Region IV:

Comments 1-3
RIV made several grammatical, typographical and editorial comments.

Response:
We agree with the comments. The procedure was revised accordingly.

Comment 4:
IV Responsibilities (G) (*page 2*)
The Region is responsible for coordinating with the State so that all necessary action is taken to have license files transferred or made available to the NRC, and coordinates all followup suspension notifications to Agreement State licensees.

(Comment: Do we want to say something about how reciprocity licensees will be notified, extended under NRC, etc? What about AS licensees who are working in other state jurisdictions and NRC jurisdictions based on the AS license?)

Response:
As stated in Items IV.C. and V.B.2.c., all Agreement and Non-Agreement States will be notified by FSME in the event that an Agreement is suspended, and they will be asked to notify their licensees, including reciprocity licensees. Therefore, the procedure was not revised to include this level of detail.

Comments 5 & 6:
RIV made several grammatical comments.

Response:
We agree with the comments. The procedure was revised accordingly.

Comment 7:
Hearing (*page 4*)

Question: Can a hearing be requested after a suspension? If so, will that hearing proceed under a different path, or will it use a Special Agreement State Board (even after the suspension order has been issued?

Response:
As noted on page 4, before a decision is made on the MRB's recommendation for suspension, the Commission must provide the State with reasonable notice and an opportunity to request a hearing on the issue, as required by Section 274j.(1). Section 274j.(1) does not require such a hearing if suspension is requested by the Governor. We note the term "reasonable notice and an opportunity on the issue, as required by Section 274j.(1)" does not preclude a request by the State after the reasonable notice and an opportunity timeframe has been communicated to the State. We believe that this is a highly unlikely scenario and can be cover on a case-by-case basis. If this situation arises, we will revisit the issue during the next revision of SA-114. There will be no change to the procedure based on this comment.

Comment 8:
V Guidance, (E) Additional Coordination… (3) (*page 5*)
The appropriate Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses, including reciprocity general licensees, affected by the suspension of the State's agreement. Mailing labels should be obtained, if possible, from the State). A letter should be prepared notifying each licensee of the suspension and reassertion by NRC and appropriate information (see Appendix F).

Response:

We agree with the comment. The procedure was revised accordingly.

Office of Federal and State Materials and Environmental Programs/ Division of Waste Management and Environmental Protection (FSME/DWMEP):

No comments.

Office of the General Counsel (OGC):

Comment:

The current revision of V.2. states the MRB should consider suspension in the following circumstances and lists four situations. Many of the terms in the four circumstances are not defined such as, "sustained period of probation," "grave degradation" and "incompatibility." In particular, since most State programs always have some degree of incompatibility because of the time period they have to adopt new NRC regulations the way V.2 is written could be interpreted that the MRB would have to consider suspension in every IMPEP review. Assuming this is not your intent, I thought it would be better to revise the section so it lists various factors MRB will consider when determining whether to suspend all or part of a State Agreement.

The MRM evaluation of whether to suspend all or part of a State Agreement will include, but not limited to, consideration of the following factors:

a. Time period State is on probation and State's progress in correcting issues identified during reviews.

b. State program degradation in one or more areas identified during a review or periodic meeting, which has or could result in serious impacts on health and safety. (i.e. loss of significant staff resulting in large number of overdue Priority 1, 2, and 3 inspections, overdue licensing actions resulting n severe health and safety issues (overexposures, medical events, etc.).

c. Evidence that a State cannot or will not be able to uphold its responsibilities under the Agreement; and

d. Extent of State program incompatibility with existing NRC regulatory requirements.

Response:

We agree with the comments. The procedure was revised accordingly.

FSME staff:

Comments:

Staff made several grammatical, typographical and editorial comments.

Response:

We agree with the comments. The procedure was revised accordingly.