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**Subject:** [External\_Sender] SA 106 Comments

Attached are my comments.

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## Office of Nuclear Material Safety and Safeguards Procedure Approval

### *The Management Review Board* Interim State Agreements (SA) Procedure SA-106

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*Date: 12/20/19*

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**NOTE**

***Any changes to the procedure will be the responsibility of the NMSS Procedure Contact. Copies of NMSS procedures are available through the NRC Web site at <https://scp.nrc.gov>***

**I. INTRODUCTION**

This document describes guidance for the implementation of the Management Review Board (MRB) as specified in the U.S. Nuclear Regulatory Commission (NRC) Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.

**II. OBJECTIVES**

- A. To provide guidance on the structure, composition, and decision-making authority of the MRB.
- B. To provide guidance for conducting MRB meetings for periodic meetings, IMPEP reviews, and for the issuance of MRB findings on the performance of Agreement State and NRC radiation control programs (Program).
- C. To provide guidance to the Organization of Agreement States (OAS) on the coordination and participation of the Agreement State MRB Representative.
- D. To provide guidance on an appeal process for programs being placed on an enhanced oversight status (e.g., monitoring or heightened oversight).

**III. BACKGROUND**

In accordance with MD 5.6, the NRC periodically evaluates Agreement State and NRC radiation control programs in an integrated manner, using common and non-common performance indicators, to ensure that public health and safety are adequately protected and that Agreement State programs are compatible with NRC's program. The MRB provides a senior-level review of the IMPEP team's findings and recommendations. The MRB chair has the final decision-making authority and issues the final NRC findings to the radiation control program. These findings can include decisions regarding monitoring, heightened oversight, probation, suspension, or termination of some or all aspects of the regulatory program's authority.

**IV. ROLES AND RESPONSIBILITIES**

- A. Executive Director for Operations (EDO):
  - Reviews and responds to an appeal that challenges an MRB Chair's decision to place or keep a Program on monitoring or heightened oversight.
- B. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs (DEDM):
  - 1. Chairs the MRB; and
  - 2. Designates an NRC member of the MRB to act as the Chair of the MRB in

instances when attendance is not possible.

C. Management Review Board:

1. Provides a senior-level review of the results of the periodic meetings;
2. Provides a senior-level review of the IMPEP review team's findings and recommendations;
3. Deliberates on IMPEP performance indicator ratings, overall adequacy and compatibility findings, and the frequency and type of the next review;
4. Considers implementation or discontinuance of monitoring, heightened oversight, probation, suspension, or termination of a radiation control program, as appropriate; and
5. Provides the MRB Chair with independent observations/insights on the adequacy and compatibility of the radiation control program being reviewed.

D. Chair, Management Review Board:

1. The MRB Chair convenes the MRB and, in consultation with the MRB members, makes the overall assessment/determination of each Agreement State and NRC radiation control program, including:
  - a. Determining the adequacy of the NRC radiation control program; and
  - b. Determining the adequacy and compatibility of the Agreement State radiation control programs.
2. Establishes precedents and significant changes to the IMPEP process;
3. Convenes the MRB to evaluate special reviews that were conducted to: (1) assess specific program weaknesses; (2) consider the results of periodic meetings; or (3) discuss any other relevant issues, such as the results of conference calls with Programs that are under monitoring or heightened oversight;
4. Ensures that the MRB consists of a group of senior NRC managers and an Agreement State Representative in accordance with Section V.B. of this procedure;
5. Signs outgoing correspondence resulting from MRB proceedings; and
6. Directs the issuance of letters of support to Agreement States.

E. General Counsel:

1. Participates on the MRB; and
2. Designates an alternate Office of General Counsel (OGC) representative in instances when attendance is not possible.
3. Ensures legal sufficiency and consistency with current laws, regulations, and agency policy.

F. Director, Office of Nuclear Material Safety and Safeguards (NMSS) and Regional Administrators:

1. Participates on the MRB, as appropriate; and
2. Designates an alternate representative in instances when attendance is not possible.

G. OAS Executive Board and OAS Designee:

1. OAS Executive Board assigns one of its members as the OAS Designee to be responsible for the coordination of Agreement State Representatives participation;
2. OAS Designee compiles a list of interested Agreement State staff who meet the criteria to serve as a representative on the MRB as listed in this procedure, and coordinates an individual's participation with the IMPEP Program Manager;
3. OAS Designee approves recommendations for Agreement State Representative participation on the MRB once each Agreement State Representative has received their management's approval;
4. OAS Designee determines the timing of recruitment of Agreement State Representatives;
5. OAS Designee coordinates Agreement State Representative assignments to specific MRB meetings and backup/substitutions, as requested by the IMPEP Program Manager; and
6. OAS Designee addresses any issues or concerns raised by the Agreement State Representatives, as a result of participation on the MRB, with the IMPEP Program Manager or NRC management, as appropriate.

H. Agreement State Representative:

1. Participates on the MRB;

2. Provides an objective perspective on any topic discussed by the MRB, based on experience gained from working for an Agreement State radiation control program; and
  3. Possesses a program management level or higher position and/or is currently serving on the OAS Executive Board.
- I. State Agreement and Liaison Programs Branch Chief:
1. Designates a point of contact for the OAS Designee;
  2. Authorizes invitational travel for the Agreement State Representative's attendance at MRB meetings, if necessary; and
  3. Works with the OAS Executive Board Designee to designate an alternate representative in instances when attendance is not possible.
- J. IMPEP Program Manager:
1. Coordinates regularly scheduled MRB meetings, and special MRB meetings to inform the MRB of the results of IMPEP and periodic meetings, respectively, as necessary/appropriate;
  2. Coordinates participation of the MRB members, Agreement State Representatives, IMPEP review team members, and members of the public at MRB meetings;
  3. Provides training on the MRB process to new MRB members, as necessary;
  4. Sends requests for Agreement State Representatives to the OAS Executive Board Designee as MRB meetings are scheduled;
  5. Maintains a list of the Agreement State Representatives and meetings attended;
  6. Ensures that public meeting notices for MRB meetings are prepared, uploaded to Agencywide Document Access and Management System (ADAMS), and e-mailed to the Public Meeting Notice System (PMNS) coordinator at least 10 days prior to the meeting date;
  7. Provides all relevant correspondence (i.e., proposed final reports, responses to draft reports, organization charts, briefing bullets, and meeting agendas) to the MRB, the review team, and other attendees at least 7 days in advance of the meeting;
  8. Takes and issues minutes of MRB meetings or designates an alternate:

- a. The minutes should summarize major discussions topics and any dissenting MRB member opinions and alternative recommendations, but are not meant to be a verbatim account of the proceedings, and
  - b. Underlying causes for program performance issues, precedents established by the MRB, and good practices should be clearly documented in the minutes.
9. Documents any deviations or requests for deviation from prior MRB direction by drafting a memorandum to MRB members. Examples of deviations that will be documented include changes to frequency of monitoring or heightened oversight conference calls and extensions of intervals between IMPEP reviews. Significant deviations, such as reducing the interval between IMPEP reviews due to a performance weakness identified outside of an IMPEP review or periodic meeting, will be presented to the MRB for concurrence during a special MRB meeting; and
10. Prepares the annual memorandum to the Commission featuring a report on the status of Agreement States' and NRC's radiation control programs.

## V. GUIDANCE

### A. Meeting Schedule

MRB meetings are to be conducted approximately 90 - 105 days from the last day of the IMPEP review. Although these meetings are exempt from the Commission's Policy Statement on staff meetings open to the public, the public is invited to observe each meeting. Each meeting will be published on the NRC's "[Public Meeting Schedule](#)" website. MRB meetings may take place beyond the 105th day in order to assemble a quorum, to accommodate Agreement State/NRC schedules, and/or to incorporate important supplemental material. Every effort should be made to meet the NRC's timeliness goal for issuing the final report no later than 30 days after the MRB meeting. Special MRB meetings to discuss the results of periodic meetings will be scheduled on an as-needed basis or at a frequency established by the MRB.

### B. Membership

1. The MRB membership generally consists of four senior NRC managers, or their designees, representing the DEDM; OGC; NMSS; NRC Regional Administrators; and an OAS designee serving as the Agreement State Representative to the MRB.
2. The Regional Administrator representative on the MRB is a rotating position. Regional Administrators or their designees should be invited to participate on a particular MRB based on the following criteria:

- a. For Agreement State Program reviews, the invited Regional Administrator participant generally should not be from the Region in which the Agreement State is geographically located.
- b. For NRC Program reviews, the MRB Chair may invite an additional OAS representative to fill the Regional Administrator position on the MRB, as appropriate.
3. The OAS Executive Board Designee is responsible for appointing an Agreement State Representative to the MRB. The Agreement State Representative to the MRB is a rotating position and may be selected from any Agreement State other than the program under review.
4. MRB members will be consulted for their perspectives on IMPEP or periodic meeting issues, may request additional information from the Program under review during the meeting, and may be asked for their opinion on the review team's findings and recommendations. The MRB members may also be asked to provide insight in support of the MRB Chair's deliberation of the review team's findings and recommendations or whether they agree with the review team's conclusions. The MRB members will be provided all relevant documentation in advance of the meeting.
5. The MRB may request additional Agreement State or NRC representatives participate in the MRB as subject matter experts to address concerns relative to a specific aspect of a program. For example, the MRB may request a representative from a State with authority to regulate low-level radioactive waste or uranium recovery to participate on the MRB if the proposed final report indicates that the program under review has a performance concern with respect to low-level radioactive waste or uranium recovery.

#### C. Meeting Protocols

1. To convene an MRB meeting, a quorum must be present. A quorum is established if three MRB members are present. Designees count toward reaching a quorum. If a quorum is present at the scheduled start time of the proceedings, but the Agreement State Representative is not present, the MRB will delay the start of the proceedings to make every effort to ensure that the designated Agreement State Representative or an alternate is in attendance.
2. The MRB Chair will consult with the other MRB members to reach a collaborative agreement on each indicator and, if necessary, to provide specific instruction to the IMPEP team leader. The MRB Chair makes the final determination on input from the MRB and has final decision-making authority on the ratings for each of the IMPEP review performance indicators.
3. The MRB Chair will also consult with the other MRB members to reach a collaborative agreement on the overall program adequacy and compatibility and,



if necessary, to provide specific instruction to the IMPEP team leader. The MRB Chair makes the final determination and has final decision-making authority on the overall program adequacy and compatibility.

4. In rare and exceptional 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 Program, within the NRC's timeliness goal of no later than 30 days after the MRB meeting, that addresses both completed review findings and the status of outstanding issues. A report supplement will be issued when the outstanding issues are resolved.
  5. The MRB may choose to go into an executive session during the public meeting at the discretion of the MRB Chair (e.g., to address potential allegations or security-related topics).
- D. Findings and Recommendation
1. The MRB Chair's overall assessment of adequacy and compatibility may include consideration of the IMPEP review team's recommendations from the proposed final IMPEP report and any information or insights provided by the MRB members, NRC Regional or Agreement State staff attending the MRB, or other NRC offices. Such information could include concerns regarding, program decline, inability to retain and/or recruit staff, or inadequate resources for ensuring adequate protection of public health and safety. The MRB Chair assessment will also consider information provided by representatives of the radiation control program and any outstanding issues with the IMPEP team and/or IMPEP report. The MRB Chair has the final decision-making authority on these matters.
  2. If the MRB recommends that an Agreement State be placed on monitoring or heightened oversight, the guidance in NMSS procedure SA-122, *Heightened Oversight and Monitoring*, will be followed. If the NRC program is found "adequate, but needs improvement," the DEDM and appropriate NRC Director, will consult with the Executive Director for Operations to determine what remedial steps need to be taken and will inform the Commission accordingly. NRC will implement immediate action to correct Program weaknesses that are similar to those that would warrant monitoring, heightened oversight, probation, suspension, or termination actions for an Agreement State. However, probation, suspension, and termination are not applicable to NRC programs.
  3. If the MRB recommends that NRC initiate proceedings to place an Agreement State program on probation, NMSS procedure SA-113, *Placing an Agreement State Program on Probation*, will be followed.
  4. If the MRB recommends that NRC initiate proceedings to suspend an Agreement State program, NMSS procedure SA-114, *Suspension of a Section 274b Agreement*, will be followed.

5. If the MRB recommends that NRC initiate proceedings to terminate an Agreement State program, NMSS procedure SA-115, *Termination of a Section 274b Agreement*, will be followed.
6. The MRB Chair may also direct follow-up or special IMPEP reviews or adjust the periodic meeting frequency, typically at the midpoint of the review period, to assess Agreement State or NRC progress on addressing program performance weaknesses. NMSS procedure SA-116, *Periodic Meetings Between IMPEP Reviews*, provides guidance for conducting periodic meetings. NMSS procedure SA-119, *Follow-up Integrated Materials Performance Evaluation Program (IMPEP) Reviews*, provides guidance for conducting follow-up IMPEP Reviews.

#### E. Appeal Process

If a radiation control program disagrees with the MRB Chair's decision to enter or continue a period of monitoring or heightened oversight, the Program may appeal that decision to the EDO. Steps to appeal the MRB Chair's decision are:

1. The Program has up to 7 calendar days from the date the final IMPEP report is issued to notify the EDO in writing that it intends to appeal the MRB Chair's decision. A sample template for the notice of appeal is available at <https://scp.nrc.gov/IMPEPTemplates.html>.
2. The Program has up to 21 calendar days from the date the final IMPEP report is issued to submit a formal appeal describing the basis for an appeal of the MRB Chair's decision.
3. The MRB Chair (or designated NRC staff) will have 14 calendar days from the date the formal appeal is received to develop and submit a response to the formal appeal.
4. Following the receipt of both the formal appeal and staff response, the EDO will have 21 calendar days to evaluate the information and document a final decision on the appeal in a response letter to the Program.
5. The Program's formal appeal, the MRB Chair (or designated staff)'s response, and the EDO's final decision response letter will be documented in ADAMS, as a report supplement, and posted to the state communications portal website.

#### F. Letters of Support

1. The underlying root cause of performance issues needing improvement are budget and staffing issues that may need senior-level management attention; or
2. One or more performance indicators have the potential to result in an unsatisfactory rating if the IMPEP criteria were applied.

#### G. Special Recognitions

1. If a radiation control program has been found satisfactory for all performance indicators during two consecutive IMPEP reviews, the letter for transmitting the final IMPEP review may include language commending the radiation control program for consistently meeting the standards of performance in all program areas or for the radiation control program's continued support in protecting public health, safety, and security. A sample template is available at <https://scp.nrc.gov/IMPEPTemplates.html>. If a radiation control program meets the above criteria, the MRB may exercise the option to extend the radiation control program's performance review period from 4 to 5 years (see NMSS procedure SA-100, *Implementation of the Integrated Materials Performance Evaluation Program (IMPEP)*).
2. The MRB may also issue a letter of support to congratulate an Agreement State during special occasions such as achieving a milestone or celebrating a particular anniversary of the Agreement signing. A template is available at <https://scp.nrc.gov/IMPEPTemplates.html>.

#### H. Agreement State Representative Participation in the MRB:

1. The Agreement State Representative may attend in person or remotely using available technology. Remote means of participation will be used whenever possible. On rare occasions, the Agreement State Representative may be requested to attend the meeting in person. For these occasions, NMSS will cover the expenses associated with the travel in accordance with Federal Travel Regulations.
2. In the rare occasion that the Agreement State Representative is unable to participate in the meeting because of a conflict, the Agreement State Representative should contact the OAS Designee to identify a replacement as soon as possible. The OAS Designee will notify the IMPEP Program Manager of any changes.
3. The Agreement State Representative will receive the proposed final IMPEP report at least a week prior to the scheduled MRB, along with other supporting documents that are provided to the MRB Board members.

## VI. REFERENCES

Management Directives (MD) available at <https://scp.nrc.gov/procedures.html>.

NMSS SA Procedures available at <https://scp.nrc.gov/procedures.html>.

**VII. 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 the NRC's Agencywide Document Access and Management System (ADAMS) are listed below.

<b>No.</b>	<b>Date</b>	<b>Document Title/Description</b>	<b>Accession Number</b>
1	5/18/00	STP Procedure SA-106	ML011230579
2	9/8/03	STP Procedure SA-106	ML040030003
3	10/5/05	STP Procedure SA-106	ML061290105
4	5/14/07	FSME Procedure SA-106	ML071370629
5	9/8/03	STP Procedure SA-106	ML040030003
6	3/4/11	FSME Procedure SA-106	ML110550453
7	12/20/19	NMSS Procedure SA-106, Revision	ML19326B466
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