

March 4, 2011

SUMMARY OF COMMENTS ON SA-106, "The Management Review Board"

I. Sent to the Agreement States for Comment: August 6, 2010 (FSME-10-073)

Comments/Dated: State of Virginia – 08/20/10 (e-mail)
State of Illinois – 08/16/10 (e-mail)

State of Virginia:

No Comments

State of Illinois:

Comment 1:

Section V.C.1. has been modified such that an MRB meeting may start without an Agreement State Liaison. The original language should be kept. It would be a good practice to have an alternate State Liaison on hand for scheduling problems. However, these should never be held without a quorum to include Agreement State representation.

Response:

We appreciate the comment however as stated in the procedure, if the Agreement State Liaison is not available, the MRB will delay the start of the proceedings to make an effort to ensure that an alternate is in attendance but will proceed if one can't be located since the Agreement State Liaison is a non voting member of the MRB. No changes will be made based on this comment.

Comment 2:

Section V.F.1 (Appendix B) addresses recommendations for good performance. This now states that an Agreement State is not considered to be a commendable program unless they have had two previous satisfactory reviews. It would take a state 3 evaluations to regain its status under these terms. The original language should remain in the text so that States have additional opportunities to receive positive reinforcement for their efforts.

Response:

We appreciate the comment however due to the IMPEP Self-Assessment report of August 17, 2010, it was agreed by the MRB to change the good performance recognition to two consecutive IMPEP reviews with ratings of satisfactory for all indicators and no recommendations instead of three. No other changes will be made based on this comment.

Sent to the NRC Offices for Comment: August 5, 2010

Comments/Dated: Region III – 09/01/10 (e-mail)
Region IV – 08/30/10 (e-mail)
OEDO – 08/11/10 (e-mail)
DILR/FSME – 08/27/10
DWMEP/FSME – 08/10/10 (e-mail)
OGC – 09/03/10

Region III:

No comments

Region IV:

No comments.

Office of the Executive Director of Operations (OEDO):

Comment 1:

I would make the OAS Liaison member a voting member on the Board. As you have seen, I treat them the same as the other MRB members. I'm sure there is history for why the OAS Liaison was not given a voting role on the board.

Response:

We appreciate the insight of the comment however from the "Report of the Working Group on IMPEP Lessons Learned" dated April 1, 2002 the following was noted:

On July 12, 2001, the Working Group requested the Office of General Counsel's (OGC's) review of current information to determine if there had been a change that would allow Agreement State Liaisons full membership and voting privileges. On September 21, 2001, the NRC's OGC responded that there has not been any change in FACA that would impact the original determination in SECY-95-047 and that there was no legal basis to allow Agreement State Liaisons this privilege.

The Working Group noted, through survey responses and discussions with MRB members and Agreement State Liaisons, that the Liaisons have not been hindered by the lack of a vote during MRB deliberations. As MRB meetings are presently conducted, the perspectives, concerns, and issues brought by the Agreement State Liaisons have been fully addressed.

If there are any changes in the legal basis for this decision, due to changes in either FACA or from the implementation of recommendations of the National Materials Program Working Group, the Working Group believes that this issue should be reconsidered.

There have been no changes in the legal basis such that this issue should be reconsideration. No changes will be made based on this comment.

**Office of Federal and State Materials and Environmental Programs/
Division of Intergovernmental Liaison and Rulemaking (FSME/DILR)**

Comment 1:

On page 1, section I, paragraph 1, line 1, delete “Per” and insert “In accordance with.”

Response:

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

Comment 2:

On page 1, section I, paragraph 1, at the end of the paragraph insert the following, “These discussions can also include an Agreement State’s decision to voluntarily return assumed regulatory authority back to the NRC (i.e., sealed source and device review program).”

Response:

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

Comment 3:

On page 4, section IV, subsection G, paragraph 6, line 5, delete the word phrase “extensions of” and insert the phrase “changes to.”

Response:

We appreciate the editorial suggestion however the existing language is essentially the same. No changes based on this comment.

Comment 4:

On page 4, section IV, subsection G, paragraph 7, line 8, why is the terminology “Heightened Oversight and Monitoring” changed to “Increased Oversight?” Is the terminology “Increased Oversight defined any where? The changing of the terminology may require a substantial amount of changes throughout the SA-106 procedure, and other IMPEP procedures where “Heightened Oversight and Monitoring” are mentioned.

Response:

We reviewed and agree with the comment. The original text will be retained.

Comment 5:

On page 4, section V, subsection A, line 2, delete the word “issue” between “to” and “the” and insert the phrase “achieve the timeliness goal of issuing.” In addition, insert the phrase “of the review” after “days.”

Response:

We agree with the edits. The procedure was revised accordingly

Comment 6:

On page 4, section V, subsection B, paragraph 2, line 2, delete the phrase “for a particular review” and insert the phrase “on a particular MRB.”

Response:

We agree with the edits. The procedure was revised accordingly

Comment 7:

On page 5, section V, subsection B, paragraph 3, line 3, insert “the” between “for” and “Agreement State.”

Response:

We agree with the edits. The procedure was revised accordingly

Comment 8:

On page 5, section V, subsection B, paragraph 3, line 6, delete the word “consent” and insert the word “opinion” which is the more appropriate term for a non-voting member.

Response:

We agree with the edits. The procedure was revised accordingly

Comment 9:

On page 5, section V, subsection B, paragraph 4, line 3, delete the word “with” and insert the phrase “relative to.”

Response:

We agree with the edits. The procedure was revised accordingly

Comment 10:

On page 5, section V, subsection C., paragraph 2, line 5, delete the word “about” and inset the word “regarding.”

Response:

We agree with the edits. The procedure was revised accordingly

Comment 11:

On page 7, section V. subsection E, the following clarifying information may be helpful relative to the Letters of Support section.

a. A background discussion on the Letters of Support maybe helpful, especially to persons new to the IMPEP process. The following is some suggested text:

“During the August 17, 2004, Commission Briefing by the Organization of Agreement States, Inc. and the Conference of Radiation Control Program Directors, Inc., State representatives discussed the benefits of a “letter of support” from the NRC to Agreement State programs. These letters assist Agreement State programs in addressing staffing and resource issues and in improving program performance. These letters are also beneficial in identifying areas needing improvement, and in identifying early indications of potential program weaknesses. The States also noted that letters of support should acknowledge the benefits, contributions, and success of good performing Agreement State Programs. In addition, the States suggested that letters of support be sent on a staff-to-staff basis and not necessarily and solely, from the Chairman to a State Governor. As a result of the August 17-briefing, the Commission directed the staff to develop a process for the issuance of letters of support. The Commission also indicated that the MRB should be assigned the responsibility of reviewing and approving letters of support. In accordance with the Commission’s direction, this section is included in the SA-106 procedure.”

b. Can Agreement State Program Directors request letters of support during periods outside of the Periodic Meeting or IMPEP Review? If so, Appendix A needs to be revised to reflect these types of requests.

c. This section should be reorganized to clarify the different types of letters of support. For example, the first type of letter of support could be “Letters of Support for Declining Performance.” This could include: (A) Letter Requested by State -- Associated with Periodic Meetings or IMPEP Reviews; (B) Letter Requested by State-- Not Associated with Periodic Meetings or IMPEP Reviews, which can be submitted at anytime from an Agreement State Program Director; and (C) Letters recommended by MRB due to heightened oversight and monitoring. The second type of letter of support would be “Letters of Support for Sustained Good Performance; and the third type of letter would be “Letters of Support for Special Recognition.”

Response:

We appreciate the need for additional background for knowledge management purpose. The following summary paragraph will be included in the procedure in response to item A. “In accordance with the August 26, 2004 SRM-MO40817B (ML042390337), staff proposed a process for issuing “letters of support” to Agreement States. The process included options for issuing such letters on a staff-to-staff basis, with or without request from affected Agreement States, and review and approval function for the Management Review Board.” Item B is already covered in the procedure and no changes are necessary. In response to item C, staff believes the information in the revised procedure is sufficient to cover the various types of letters and no changes are necessary.

Comment 12:

There is no 'Page 8 of 10.' The document jumps from page 7 to page 9.

Response:

We agree with this edit. The procedure will be revised accordingly.

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

No comments.

Office of General Council (OGC)

Comment 1:

Section IV, subsection G, paragraph 6. Change the word "session" to "meeting".

Response:

We agree with this edit. The procedure will be revised accordingly.

Comment 2:

Section V, subsection A. Would significant deviations be discussion at "special meetings" described in section? If so, make suggested change. If not when is a "special meeting" called.

Response:

We appreciate the editorial suggestion however the existing language is essentially the same. No changes based on this comment.

Comment 3:

Section V, subsection C, paragraph 1. As written, this section does not consider a situation where the liaison can be reached, but not attend for some other reason.

Response:

We appreciate the editorial suggestion however the existing language is correct based on that the liaison is not a voting member and as long as all three MRB members are in attendance, the meeting will go on as scheduled. No changes based on this comment.