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September 16, 2016

Joe O'Hara  
Office of Nuclear Materials Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

RE: Draft Revision to The Office of Nuclear Material Safety and Safeguards Procedure SA-113, Placing an Agreement State Program on Probation (STC-16-052)

Dear Mr. O'Hara:

The Organization of Agreement States (OAS) Executive Board (Board) has reviewed the above document and respectfully submits the following comments for your consideration.

1. Recognizing that the reason for placing an Agreement State (AS) Program on probation may come about from a variety of sources (i.e., IMPEP reviews, special reviews, or other interactions with the AS), the most common avenue will be the results of an IMPEP review. Considering this, the Management Review Board (MRB) routinely meets approximately three months after the review. Other than Section V.A.3., which states that if the MRB determines probationary status is warranted, a meeting with senior State officials may be scheduled prior to declaring probationary status. SA-113 is silent on NRC's requirement to give early notification to an Agreement State program if probation is being considered. The OAS recommends that NRC add the following responsibility of the Regional State Agreements Officer (RSAO) in Section IV.D.:

**“Communicate and coordinate early in the process with AS staff on the potential for probation considerations by the MRB.”**

2. One of the criteria for being placed on probation (p. 7/13) is “When a program has repeatedly been late in adopting required compatibility elements and increased oversight by NRC would yield improvements.”

The OAS recommends that the language be changed from “late in adopting” to “fails to adopt”. Understand that states usually cannot control timeliness issues in adopting regulations. If a state is regularly late on adopting rules, as long as it has other means

of ensuring compatibility with NRC regulations (such as license conditions), and there is no significant health and safety impact, then they should be not be penalized.

Alternately, the OAS recommends that the third criteria be changed to "When a program has repeatedly been late in adopting required compatibility elements which have led to significant decrease in the state's ability to protect public health and safety, and increased oversight by NRC would yield improvements."

Continuing on this topic, the OAS believes that it is highly unlikely that any amount of NRC oversight will improve or change a state's rulemaking process. Instead of oversight, the NRC should at this point write letters to the rulemaking bodies and officials to request support and efficiency in getting these essential rules passed. This alternative approach would not require probationary status, as probation would likely not help as much as a letter from the NRC to a high government official on the seriousness of the situation.

We appreciate the chance to comment on this subject, and stand ready to answer any questions you may have.

Sincerely,



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