January 31, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Charles L. Miller, Director ***/RA/***
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: REPORT ON AGREEMENT STATES' AND U.S. NUCLEAR REGULATORY COMMISSION'S RADIOACTIVE MATERIALS PROGRAMS FOR CALENDAR YEAR 2010

Enclosed is the annual report to inform the Commission of the status of the U.S. Nuclear Regulatory Commission and Agreement State radioactive materials programs, as required by the June 30, 1997, Staff Requirements Memorandum on SECY-97-054, "Final Recommendations on Policy Statements and Implementing Procedures for: 'Statement of Principles and Policy for the Agreement State Programs' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs.'"

Enclosure:
Report on Agreement States' and NRC's
Radioactive Materials Programs

cc: SECY
OGC
OCA
OPA
CFO
EDO

CONTACT: Michelle Beardsley, FSME/MSSA
(610) 337-6942

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ANNUAL REPORT FOR U.S. NUCLEAR REGULATORY COMMISSION AND AGREEMENT STATE RADIOACTIVE MATERIALS PROGRAMS

CALENDAR YEAR 2010

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to periodically review NRC and Agreement State radioactive materials programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and to ensure that Agreement State programs are compatible with NRC's program. The frequency of IMPEP reviews for a particular program range from 1-4 years, based on the program's performance. All reviews are conducted in accordance with NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. IMPEP reviews are conducted by teams of NRC and Agreement State staff members. IMPEP teams use the established criteria in MD 5.6, guidance documents maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME), and skills and knowledge acquired at a 2-day training program for IMPEP team members to effectively assess each program's adequacy to protect public health and safety and each Agreement State program's compatibility with NRC's program. NRC staff also conducts periodic meetings between IMPEP reviews. Periodic meetings were created to help NRC Headquarters, the NRC Regions, and the Agreement States remain knowledgeable of the status of each other's respective program.

Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of publication of this report. Regarding the adequacy provision of Section 274b. of the Atomic Energy Act (the Act) of 1954, as amended, 30 of the 37 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arizona, Arkansas, Georgia, Kentucky, Oregon, Tennessee and Massachusetts have a program finding of "adequate to protect public health and safety, but needs improvement." Regarding the compatibility provision of Section 274b. of the Act, 35 of the 37 Agreement State programs have a program finding of "compatible with NRC's program." California and New York have a program finding of "not compatible with NRC's program." All NRC radioactive materials programs currently have a program finding of "adequate to protect public health and safety," as shown in Attachment 2 of this report.

In order to provide timely feedback to programs under review, NRC has set a goal to issue a publicly available final report for each program reviewed within 104 days from the last day of the review. Attachment 3 presents NRC's performance for IMPEP report issuance against the 104-day goal for the reviews that took place in NRC Fiscal Year (FY) 2010.

When programmatic weaknesses exist in an Agreement State program, NRC primarily uses two processes, Heightened Oversight and Monitoring, to ensure that an Agreement State program needing improvement is progressing toward re-establishing a fully satisfactory program. Under Heightened Oversight, a State is required to develop a Program Improvement Plan (Plan) to address IMPEP findings and recommendations. The Plan is submitted to NRC for approval prior to implementation. A State on Heightened Oversight must also submit status reports prior to bimonthly conference calls conducted by NRC staff with State program managers and staff to discuss program status. For Monitoring, a State's managers and staff must participate in quarterly calls with NRC staff to discuss program status. The decision to put an Agreement

State program on either Monitoring or Heightened Oversight is done at the direction of the Management Review Board (MRB). The results of all IMPEP reviews and periodic meetings are presented to the MRB for its deliberation of the findings. An Agreement State program can be placed on Heightened Oversight or Monitoring as a result of an IMPEP review or periodic meeting. Currently, three States are on Heightened Oversight and five States are on Monitoring. Discussions of each of the States on Heightened Oversight and Monitoring are provided in the corresponding sections below. A summary of recent activities related to States on Heightened Oversight or Monitoring is presented in Attachment 4. Also provided is a discussion for the State (Tennessee) that is not subject to Heightened Oversight or Monitoring but has a finding of "adequate, but needs improvement."

STATES ON HEIGHTENED OVERSIGHT

Arizona:
The Arizona Agreement State Program has been on Heightened Oversight since 2008. The 2008 IMPEP review revealed budget and staffing issues. A followup IMPEP review conducted March 29 - April 1, 2010, showed some program improvements. However, significant issues, including loss of additional staff, persistent number of overdue inspections, and concerns regarding the quality of licensing actions, remained. Bimonthly calls with Program management during 2010 revealed minimal progress by the Program to address these issues. At the June 22, 2010, MRB meeting, the review team recommended, and the MRB agreed, to extend the period of Heightened Oversight with a periodic meeting to be held in spring 2011. The next full IMPEP is planned for April 2012.

Arkansas:
The Arkansas Agreement State Program has been on Heightened Oversight since the August 28, 2007, periodic meeting. The performance weaknesses identified during the 2006 IMPEP review had not been resolved. The 2009 IMPEP review confirmed the program made some progress, however staffing issues persisted. At the January 14, 2010, MRB meeting, the review team recommended, and the MRB agreed, that the Arkansas Agreement State Program was adequate to protect public health and safety, but needs improvement, and compatible with NRC's program. The review team also recommended, and the MRB agreed, that the program remain on Heightened Oversight and that a followup review be conducted in one year. The followup review is currently scheduled for April 2011.

New York:
The New York Agreement State Program was found adequate to protect public health and safety but not compatible with NRC's program following the November 1-9, 2006, IMPEP review. Due to the number of overdue NRC amendments by the three State Agencies that compose the New York Agreement State Program, the State continues on Heightened Oversight with quarterly calls being held with Program Management. Both the 2009 periodic meeting and the quarterly calls conducted in 2010 revealed that the State has made considerable progress in addressing the overdue regulations. Staff presented its findings from the July 2009 periodic meeting to the MRB on January 7, 2010. The next full IMPEP review of the New York Agreement State Program is scheduled for June 2011.

STATES ON MONITORING

California:
The California Agreement State Program was placed on Monitoring in June 2008. While the IMPEP review team determined the State exhibited marked improvements in the program during the review period, the State continued to struggle with adopting compatibility-required regulations. Staff conducts conference calls with California managers and staff every 4 months to assess the State's progress in adopting the overdue and upcoming regulatory amendments. Staff held a periodic meeting with California on October 13, 2010. Staff found that while the State has made progress in addressing overdue regulations, they still have several to complete. Staff presented its findings from the periodic meeting to the MRB on January 25, 2011, and the MRB agreed with staff recommendation that the period of Monitoring of the California Agreement State Program should continue; and that the next full IMPEP review take place as scheduled, in FY 2012.

Georgia:
The Georgia Agreement State Program was placed on Monitoring following the September 2008 IMPEP review. The review team identified performance weaknesses in the areas of staffing and training, performance of inspections, and technical quality of regulatory products. Staff held a periodic meeting with Georgia on October 28, 2009. Staff noted improvements in Georgia's performance during the meeting; however, there had not been a sufficient period of sustained performance to warrant recommending that the program be taken off of Monitoring. Staff presented its findings from the periodic meeting to the MRB on January 7, 2010. The next full IMPEP review of the Georgia Agreement State Program will take place in FY 2012, with another periodic meeting in spring 2011.

Kentucky:
A full IMPEP review of the Kentucky Agreement State Program took place July 28 – August 1, 2008. The review team noted marked improvements in the program; however, several performance weaknesses persisted that warranted continued oversight on NRC's part. The MRB agreed with the review team's recommendation to keep the Kentucky program on Monitoring during the October 28, 2008, MRB meeting. Staff held a periodic meeting with the Commonwealth on September 15, 2009. During the meeting, staff noted improvement in program performance. Staff presented its findings from the periodic meeting to the MRB on January 7, 2010. The next full IMPEP review of the Kentucky Agreement State Program will take place in FY 2012, with another periodic meeting to be held in spring 2011.

Oregon:
The Oregon Agreement State Program was placed on Monitoring following the January 2008 IMPEP review and remained on Monitoring after the August 2009 IMPEP review. The review team found that the State made significant improvement in addressing some of the performance weaknesses. However, persisting issues with documentation of inspections and incidents continued. A periodic meeting was held in September 2010. Staff presented its findings from the periodic meeting to the MRB on January 25, 2011, and the MRB agreed with staff recommendation that Monitoring should be discontinued as the Program had addressed and corrected all three recommendations made during the last review. Staff also recommended that the next IMPEP take place as currently scheduled in FY 2012.

Massachusetts:
The Massachusetts Agreement State Program was placed on Monitoring following the September 20, 2010, MRB meeting which discussed the results of the IMPEP review conducted July 12 - 16, 2010. The review team noted weaknesses in management oversight of the Radiation Control Program which resulted in persistent staffing vacancies, overdue inspections and repeat recommendations from the 2006 IMPEP review. The first Monitoring call was held with Program management on December 1, 2010. Staff found that the Commonwealth had made significant progress in addressing the issues of management oversight and staffing vacancies. The next full IMPEP review of the Massachusetts Agreement State Program will take place in FY 2014, with a periodic meeting to be held in summer 2011.

STATE NOT SUBJECT TO ADDITIONAL REVIEW PROCESSES

Tennessee:
The Tennessee Agreement State Program has an overall program finding of "adequate to protect public health and safety, but needs improvement." However, it is not subject to Heightened Oversight or Monitoring. At the July 15, 2008, MRB meeting, the Tennessee Agreement State Program was found "adequate to protect public health and safety, but needs improvement" due to performance issues with staffing and training, timeliness of adoption of compatibility-required regulatory amendments, and quality of sealed source and device evaluations toward the beginning of the review period. Tennessee was able to resolve or had a plan in place to resolve the identified performance issues; therefore, the review team believed, and the MRB agreed, that the performance issues did not warrant additional oversight at that time. A periodic meeting was held in June 2010 and the staff found that the State had made considerable progress in addressing all of the recommendations made during the previous IMPEP. Staff presented its findings from the periodic meeting to the MRB on January 25, 2011, and the MRB agreed with staff recommendation that the next IMPEP take place as currently scheduled, in FY 2012.

TRENDING ANALYSIS

During calendar year (CY) 2010, some previously identified trends continued. Due to the economic climate, budget issues continued to affect several Agreement State programs. Staff is closely monitoring the effects of budget shortfalls and budget cuts in these States. Budget issues have caused staffing issues, such as difficulty in recruitment and retention and hiring freezes. NRC issued letters of support to two States (New Mexico and South Carolina) in CY 2010 to draw State management's attention to staffing retention issues that could potentially affect the performance of the program in the future. In addition, it should be noted that the request by the State of Mississippi's Radiological Health Program for increased wages was granted by their State Personnel Board on August 26, 2010, due in large part, to the letter of support issued by NRC in 2009.

IMPEP reviews continued to reveal an issue with several States regarding the marking of documents containing sensitive information. Review teams identified inconsistencies in, and in some cases the lack of, proper marking of documents such as licenses and inspection reports

containing sensitive unclassified, non-safeguards information (SUNSI). This has been the subject of much discussion at several MRB meetings. FSME staff is currently working on a letter which will be issued to all Radiation Control Program Directors (RCPDs) clarifying their responsibility to ensure that all documents containing SUNSI be marked appropriately.

IMPEP reviews continued to confirm that all programs put health and safety first and foremost. Programs reprioritized their workload to overcome staffing or budgeting issues to the best of their ability. IMPEP reviews confirmed that the Agreement States continue to implement high-priority programmatic changes, such as National Source Tracking System (NSTS), the Increased Controls, Fingerprinting requirements, and the pre-licensing guidance.

CURRENT IMPEP INITIATIVES

In a dynamic regulatory environment, IMPEP must adapt to new regulatory changes to continue an effective review of NRC Regional and Agreement State radioactive materials programs. The paragraphs below detail some of the ongoing initiatives in IMPEP:

In 2009 an audit was performed of the IMPEP process by the Office of the Inspector General (OIG-09-A-08). Recommendation No. 1 of this report directed that a mechanism be developed to conduct self-assessments of IMPEP on a regular basis. In accordance with this recommendation, a self-assessment of the IMPEP program was conducted by an external review group comprised of individuals from NRC Regions and headquarters, and the Agreement States in 2010 (Report: ML102280463). Overall, the team found the program to be highly effective in fulfilling its basic objective (evaluating the adequacy and compatibility of Agreement State and NRC materials activities using a common set of performance review criteria and a similar review methodology). The team did develop a set of recommendations and enhancements that could, if implemented, result in an even stronger and more efficient IMPEP for the future. Those recommendations and enhancements are listed below:

- Evaluate the inclusion of security issues (currently addressed under TI-002), specifically NSTS, into existing indicators (substantive);
- Review of reciprocity inspections during IMPEP reviews should be evaluated against performance-based, rather than quantitative, criteria (substantive);
- Recognize consistently high performing organizations by some mechanism, e.g., extension of review frequency, letter of recognition, press release, etc. (substantive);
- Add “Executive Summary” section at the beginning of each IMPEP report (enhancement);
- Encourage the increased use of electronic documents by the Agreement States for IMPEP reviews (enhancement);
- Assure consistent high level of NRC and Agreement State management participation at Management Review Board meetings (enhancement);
- Provide orientation training to new MRB members on MRB functions, roles and responsibilities (enhancement);

- Consider including a more explicit trigger point for placing a program on Probation, in FSME Procedure SA 113 (substantive);
- Employ a more performance-based approach to findings of compatibility in Agreement State programs (substantive);
- Place greater focus on inspector accompaniments for IMPEP reviews, i.e., increase number of accompaniments and expand performance period (substantive);
- Expand pool of IMPEP Team Leaders for greater program effectiveness and succession planning (enhancement);
- Assure that individuals selected for IMPEP training possess appropriate skills (enhancement);
- Revise MD 5.6 to reflect current organization structure, roles and responsibilities, and references to current appropriate SA procedures (enhancement);
- Conduct future self-assessments of the IMPEP on a 4-6 year frequency (substantive);
- Expand scope of IMPEP to include additional FSME functions (substantive).

- Staff has been actively reviewing and revising the agency's procedures that govern the performance of IMPEP reviews to ensure that the procedures are up to date and reflect current practices. In 2010, staff issued 13 FSME SA and Administrative (AD) Procedures, and sent out 5 FSME SA Procedures in draft for Agreement State review and comment.

SUMMARY

NRC and the Agreement States continue to work in cooperation to achieve the goals of the National Materials program. Inclusion of the Agreement States in the IMPEP review process enables a productive exchange of information. NRC and the Agreement States both benefit from the IMPEP program's blending of State and Federal resources. In addition to the cooperation demonstrated through the IMPEP process, NRC and the Agreement States continue to work together on a number of issues. IMPEP results indicate that 34 regulatory programs are adequate to protect public health, safety, and environment, and 7 are adequate, but needing improvement. This is virtually unchanged from 2009. Staff continually seeks and receives Agreement State involvement in improving the nationwide protection of health, safety, security and the environment. The Agreement States routinely contribute resources to NRC working groups on issues such as rulemaking, updating guidance, and revising policy. The Agreement States have provided significant input, and will continue to play an instrumental role, to the Agency's actions in ensuring consistent, nationwide implementation of a program to prevent the malevolent use of radioactive materials while allowing the beneficial uses to continue.

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of January 19, 2011)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2010	adequate	compatible
Arizona	2010	adequate, but needs improvement	compatible
Arkansas	2010	adequate, but needs improvement	compatible
California	2008	adequate	not compatible
Colorado	2010	adequate	compatible
Florida	2007	adequate	compatible
Georgia	2008	adequate, but needs improvement	compatible
Illinois	2009	adequate	compatible
Iowa	2007	adequate	compatible
Kansas	2010	adequate	compatible
Kentucky	2008	adequate, but needs improvement	compatible
Louisiana	2008	adequate	compatible
Maine	2007	adequate	compatible
Maryland	2007	adequate	compatible
Massachusetts	2010	adequate, but needs improvement	compatible
Minnesota	2008	adequate	compatible
Mississippi	2009	adequate	compatible
Nebraska	2006	adequate	compatible
Nevada	2009	adequate	compatible
New Hampshire	2008	adequate	compatible
New Jersey	2011	adequate	compatible
New Mexico	2009	adequate	compatible
New York	2007	adequate	not compatible
North Carolina	2009	adequate	compatible
North Dakota	2007	adequate	compatible
Ohio	2009	adequate	compatible
Oklahoma	2006	adequate	compatible

Attachment 1

Oregon	2009	adequate, but needs improvement	compatible
Pennsylvania	2010	adequate	compatible
Rhode Island	2008	adequate	compatible
South Carolina	2007	adequate	compatible
Tennessee	2008	adequate, but needs improvement	compatible
Texas	2010	adequate	compatible
Utah	2008	adequate	compatible
Virginia	2011	adequate	compatible
Washington	2008	adequate	compatible
Wisconsin	2009	adequate	compatible

SUMMARY OF NRC RADIOACTIVE MATERIALS PROGRAMS' ADEQUACY STATUSES
(As of January 19, 2011)

REGION	REVIEW YEAR	ADEQUACY FINDING
HQ SS&D	2010	adequate
Region I	2010	adequate
Region III	2007	adequate
Region IV	2009	adequate

Attachment 2

IMPEP REPORT TRACKING
FISCAL YEAR 2010

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
NRC SS&D	10/09	98
Arizona	10/09	105
Pennsylvania	11/09	103
Texas[1]	2/10	108
Arizona (followup)	3/10	101
Colorado	4/10	101
NRC Region I	4/10	90
Alabama	5/10	89
Kansas[2]	6/10	117
Massachusetts	7/10	90
Oklahoma	9/10	98

[1] Report issuance was delayed to allow the review team and the State to further discuss the status of a recommendation from the 2005 IMPEP report based on MRB direction.

[2] MRB meeting was rescheduled beyond the 74 day mark to accommodate the State's request.

HEIGHTENED OVERSIGHT AND MONITORING CHART

State	Status	RSAO	Last Contact	Next Contact	Additional Information
Arizona	Heightened Oversight	R. Erickson	Bimonthly Call 10/21/10	Periodic mtg. 02/01/11	1. Placed on Heightened Oversight after March 2008 IMPEP due to issues with staffing/training, status of inspections, quality of inspections and quality of licensing actions. 2. Next IMPEP: FY2012
Arkansas	Heightened Oversight	R. Erickson	Quarterly Call 10/20/10	Quarterly Call 01/11	1. Continued on Heightened Oversight after October 2009 IMPEP review due to staffing/training, timeliness of inspections, and licensing actions. 2. Next IMPEP: FY 2011 (followup)
New York	Heightened Oversight	M. Orendi	Quarterly Calls 11/10	Quarterly Calls 02/11	1. Continued on Heightened Oversight after November 2006 IMPEP review due to overdue regulations. 2. Next IMPEP: FY 2012
California	Monitoring	R. Erickson	Periodic Meeting 10/13/10	Special MRB 01/25/11	1. Downgraded to Monitoring after 4/2008 IMPEP review due to overdue regulations. 2. Next IMPEP: FY 2012
Georgia	Monitoring	M. Orendi	Quarterly Call 11/22/10	Quarterly Call 02/11	1. Placed on Monitoring after 9/2008 IMPEP due to issues with training, status of inspections, and quality of licensing actions 2. Next IMPEP: FY 2012
Kentucky	Monitoring	M. Orendi	Quarterly Call 11/17/10	Quarterly Call 02/11	1. Placed on Monitoring after July 2005 Periodic Meeting due to staffing and inspections. 2. Next IMPEP: FY 2012
Massachusetts	Monitoring	D. Janda	Quarterly Call 12/01/10	Quarterly Call 03/11	1. Placed on Monitoring from July 2010 IMPEP review based on staffing, inspection and compatibility requirements. 2. Next Periodic Meeting: July 2011.

Attachment 4

HEIGHTENED OVERSIGHT AND MONITORING CHART

State	Status	RSAO	Last Contact	Next Contact	Additional Information
Oregon	Monitoring	R. Erickson	Periodic Meeting 09/21/10	Special MRB 01/25/11	1. Continued on Monitoring following August 2009 IMPEP review based on continuing issues with inspections, licensing and incident documentation. 2. Next IMPEP: FY 2012