

March 29, 2013

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

FROM: Mark A. Satorius, 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 2012

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

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

CALENDAR YEAR 2012

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to periodically review the 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 the NRC's program. The frequency of IMPEP reviews for a particular program range from 1 to 5 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. IMPEP teams use the established criteria in MD 5.6 and guidance documents maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME) to effectively assess the adequacy of each NRC and Agreement State materials program as well as the compatibility of each Agreement State. The NRC staff also conducts periodic meetings between IMPEP reviews. These periodic meetings were created to help the NRC and the Agreement States remain knowledgeable of the status of each other's respective program.

The NRC tracks the adequacy and compatibility status of each Agreement State program and adequacy of each NRC regional program. Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of the date of this report. Regarding the adequacy provision of Section 274b. of the Atomic Energy Act (the Act) of 1954, as amended, 29 of the 37 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arkansas, Georgia, Kentucky, Massachusetts, New York, North Dakota, Oregon, and Rhode Island 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, 34 of the 37 Agreement State programs have a program finding of "compatible with NRC's program." California, New Hampshire, and New York have a program finding of "not compatible with the NRC's program." All NRC regional 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, the 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) 2012.

When programmatic weaknesses exist in an Agreement State program, the 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 its recurring conference calls conducted by the NRC staff with State program managers and staff to discuss program status. For Monitoring, a State's managers and staff participate in quarterly calls with the NRC staff to discuss program status. The decision to put

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an Agreement State program on either Heightened Oversight or Monitoring is done at the direction of the Management Review Board (MRB). 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 four 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.

STATES ON HEIGHTENED OVERSIGHT

Georgia:

On January 17, 2013, the MRB met to consider the findings of the Georgia Agreement State IMPEP review. The State was found unsatisfactory for the performance indicators, Technical Quality of Inspections and Technical Quality of Incident and Allegation Activities; satisfactory, but needs improvement, for the performance indicators, Technical Staffing and Training, Status of Materials Inspection Program, and Technical Quality of Licensing Actions; and satisfactory for the two non-common performance indicators reviewed (Compatibility Requirements and Sealed Source and Device Evaluation). Overall, the program was found adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The IMPEP team identified an overall declining performance by Georgia since the 2008 IMPEP review. Significant deficiencies were noted throughout the program and have the potential to impact public health and safety if left uncorrected. The State submitted a Program Improvement Plan on March 7, 2013 that documents immediate and long term corrective actions. Because of the significance of the findings, the MRB is recommending to the Commission that Georgia be placed on Probation, a formalized process that requires Commission approval. This recommendation will be provided to the Commission in a SECY paper in April 2013. If approved, a press release and notifications to the Governor and Congressional delegation will be made. Probation requires an increased level of communication between the NRC staff and the State program office. Until a determination regarding Probation is made, the Georgia Agreement State program is on Heightened Oversight.

New York:

On October 11, 2011, the MRB met to consider the findings of the New York Agreement State IMPEP review. The State was found unsatisfactory for the performance indicators, Technical Quality of Incident and Allegation Activities and Compatibility Requirements; satisfactory, but needs improvement for the performance indicators, Technical Staffing and Training and Technical Quality of Licensing Actions; and satisfactory for the other four indicators reviewed. Overall, the MRB found the New York Agreement State Program adequate, but needs improvement, to protect public health and safety, and not compatible with the NRC's program. Because of the significance of the findings, the MRB determined that the New York Program should continue the period of Heightened Oversight. In response to the 2011 IMPEP final report, each of the three New York agencies that comprise the Agreement State program developed Plans to establish tasks and target completion dates as means to document their implementation of the review team's recommendations and adoption of overdue regulations. The next full IMPEP review of the New York Agreement State Program is scheduled for

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September 2013. Periodic meetings were held with each of the three New York agencies in September 2012. An MRB met on March 5, 2013, to discuss New York State performance.

North Dakota:

On June 16, 2011, the MRB met to consider the findings of the North Dakota Agreement State IMPEP review. The State was found unsatisfactory for the performance indicator, Technical Quality of Inspections; satisfactory, but needs improvement, for the performance indicators, Status of the Materials Inspection Program, Technical Quality of Licensing Actions, and Technical Quality of Incident and Allegation Activities; and satisfactory for the other two indicators reviewed. Overall, the MRB found the North Dakota Agreement State Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. Because of the significance of the findings the MRB determined that the North Dakota Program should undergo a period of Heightened Oversight. In response to the 2011 IMPEP final report, North Dakota developed a Plan as means to document progress in correcting the identified performance concerns. The next full IMPEP review of the North Dakota Agreement State Program is scheduled for April 2013. A periodic meeting was held in March 2012.

STATES ON MONITORING

California:

Following the 2008 IMPEP review the California Agreement State Program was removed from Heightened Oversight and placed on Monitoring by the MRB as the State had corrected a number of performance weaknesses. However, the IMPEP team found that while the State made progress in addressing overdue regulations, it still had several to complete. This situation was unchanged during the State's most recent IMPEP conducted in October 2011. California was found adequate to protect public health and safety, and not compatible with the NRC's program. The State committed to apply an additional resource to the area of regulation development and to update its plan for completing overdue regulatory packages to include details and milestones necessary to demonstrate sustained performance with regard to compatibility requirements. The review team recommended and the MRB agreed that California remain on Monitoring. California had a periodic meeting in January 2013 and will have a full IMPEP in FY 2015.

Kentucky:

Following the periodic meeting in July 2005, the Kentucky Agreement State Program was initially placed on Monitoring by the MRB, primarily for staffing shortages and declining performance. During the 2008 IMPEP, the review team noted some marked improvements in the program, however, several performance weaknesses persisted that warranted continued NRC oversight. 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 periodic meetings with the Commonwealth in September 2009 and February 2011. The Program continued to make improvements. From the IMPEP review in June 2012, the review team found the Commonwealth's performance satisfactory for five performance indicators, satisfactory but needs improvement for the performance indicator Compatibility Requirements, and unsatisfactory for the performance indicator Status of Materials Inspection Program. The MRB

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directed that Kentucky remain in a Monitoring status. Kentucky will have a periodic meeting in two years and the next IMPEP will be in June 2016.

New Hampshire:

Following the 2012 IMPEP review, the New Hampshire Agreement State Program was placed on Monitoring by the MRB. New Hampshire's performance was found satisfactory for six of seven performance indicators reviewed. The Compatibility Requirements indicator was found unsatisfactory. The review team recommended, and the MRB agreed, that the New Hampshire Agreement State Program be found adequate to protect public health and safety, and not compatible with the NRC's program. Based on the results of the current IMPEP review, the review team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 4 years with a periodic meeting occurring mid-cycle. The mid-cycle meeting will place additional emphasis on the status of Compatibility Requirements. In addition, the MRB directed that a period of Monitoring be initiated, with discussions occurring at a frequency of every 4 months. The review team determined that Monitoring will be a useful tool in assessing the State's progress toward completion of the overdue regulations.

Rhode Island:

Following the October 2011 IMPEP, the Rhode Island Agreement State Program was placed on Monitoring by the MRB. The IMPEP review team found the State's performance satisfactory for the performance indicators Technical Staffing and Training, Technical Quality of Licensing, and Technical Quality of Incidents and Allegations; satisfactory but needs improvement for the performance indicators Technical Quality of Inspections and Compatibility Requirements; and unsatisfactory for the performance indicator Status of Materials Inspection Program. Overall, the MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with NRC's program. Rhode Island had a periodic meeting in December 2012. Rhode Island will have a full IMPEP review in October 2015.

STATES REMOVED FROM ADDITIONAL OVERSIGHT PROCESS

Arizona:

Following the 2008 IMPEP review, the Arizona Agreement State Program was placed on Heightened Oversight by the MRB. The 2008 IMPEP review revealed budget and staffing issues. A followup IMPEP review conducted in March 2010 showed some program improvements. However, significant issues, including loss of additional staff, the persistent number of overdue inspections, and concerns regarding the quality of licensing actions, remained. The MRB agreed to extend the period of Heightened Oversight. From the 2012 IMPEP review, Arizona's performance was found satisfactory for five of the six performance indicators reviewed and satisfactory, but needs improvement, for the indicator, Compatibility Requirements. The MRB found the Arizona Agreement State Program adequate to protect public health and safety and compatible with NRC's program. The MRB directed that the next full IMPEP review take place in approximately 4 years, with a periodic meeting in 1 year. The MRB also directed that the period of Heightened Oversight of the Arizona Agreement State Program be discontinued.

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Arkansas:

Following the 2007 periodic meeting the Arkansas Agreement State Program was placed on Heightened Oversight by the MRB because of the unresolved performance weaknesses identified during the 2006 IMPEP review. The 2009 IMPEP review confirmed the program made some progress, however staffing issues persisted. Following the April 2011 followup IMPEP, the Arkansas Agreement State Program was removed from Heightened Oversight and put on Monitoring. While some performance weakness were still present in the technical quality of licensing actions, the State made significant improvements with staffing and training and in the status of the materials inspection program. Following the periodic meeting in October 2012, the MRB directed that Arkansas be removed from Monitoring. The next full IMPEP will be in October 2013.

TRENDING ANALYSIS

Staffing and budget issues are often linked to performance problems for Agreement State programs. Declining markets and unprecedented economic conditions since the terrorist attacks of 2001 have had consequential impacts on State and Federal governments. Through the IMPEP program and regular contact with the Regional State Agreements Officers, the NRC staff stays informed and closely monitors the effects of budget shortfalls and budget cuts in the Agreement States.

In preparing the 2011 annual report to the Commission on the status of the NRC and Agreement State radioactive materials programs, staff noted a gradual increase in the number of programs found adequate to protect public health and safety, but needs improvement. In addition, the number of Agreement State programs placed on either a Monitoring or Heightened Oversight status had increased from six to eight since 2005. At the close of 2012, seven States were either in a Heightened Oversight or Monitoring status.

Staff conducted an integrated assessment of IMPEP data from 1996-2012 to assess issues impacting materials program performance. In the process, the staff established baseline performance information. The baseline performance serves to benchmark future performance. Overall, performance of materials programs has been steady. The baseline score for materials programs equates to five of six performance indicators being found satisfactory, and one indicator, satisfactory but needs improvement. The assessment showed no new trends of declining performance. The assessment showed that sustaining the top level of performance when there is significant program staff turnover is a challenge for materials programs.

SUMMARY

IMPEP reviews continued to confirm that all Agreement State programs put health and safety first and foremost. Programs are reprioritizing and managing their workload to overcome staffing or budgeting constraints to the best of their ability. IMPEP reviews confirmed that the Agreement States continue to implement high-priority programmatic changes when performance issues are identified by the NRC's IMPEP process. The NRC and the Agreement States continue to work in cooperation to protect public health and safety. Inclusion of the Agreement States in the IMPEP review process enables a productive exchange of information.

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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. Staff continually seeks and receives Agreement State involvement in improving the nationwide protection of health, safety, security and the environment. For example, the Agreement States routinely contribute resources to NRC working groups on issues such as rulemaking, updating guidance, and revising policy. In addition, the Agreement States have provided significant input, and will continue to play an instrumental role, in the agency's actions to ensure consistent, nationwide implementation of a program to prevent the malevolent use of radioactive materials while allowing the beneficial uses to continue.

Attachments:

1. Summary of Agreement States' Adequacy and Compatibility Statuses
2. Summary of NRC Radioactive Materials Programs Adequacy Statuses
3. IMPEP Report Tracking Fiscal Year 2012
4. Heightened Oversight and Monitoring Chart

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of March 5, 2013)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2010	adequate	compatible
Arizona	2012	adequate	compatible
Arkansas	2011	adequate, but needs improvement	compatible
California	2012	adequate	not compatible
Colorado	2010	adequate	compatible
Florida	2011	adequate	compatible
Georgia	2013	adequate, but needs improvement	compatible
Illinois	2009	adequate	compatible
Iowa	2012	adequate	compatible
Kansas	2010	adequate	compatible
Kentucky	2012	adequate, but needs improvement	compatible
Louisiana	2012	adequate	compatible
Maine	2011	adequate	compatible
Maryland	2011	adequate	compatible
Massachusetts	2010	adequate, but needs improvement	compatible
Minnesota	2012	adequate	compatible
Mississippi	2009	adequate	compatible
Nebraska	2011	adequate	compatible
Nevada	2009	adequate	compatible
New Hampshire	2013	adequate	not compatible
New Jersey	2011	adequate	compatible
New Mexico	2009	adequate	compatible
New York	2011	adequate, but needs improvement	not compatible
North Carolina	2009	adequate	compatible
North Dakota	2011	adequate, but needs improvement	compatible
Ohio	2009	adequate	compatible
Oklahoma	2010	adequate	compatible

Oregon	2009	adequate, but needs improvement	compatible
Pennsylvania	2010	adequate	compatible
Rhode Island	2012	adequate, but needs improvement	compatible
South Carolina	2012	adequate	compatible
Tennessee	2012	adequate	compatible
Texas	2010	adequate	compatible
Utah	2011	adequate	compatible
Virginia	2011	adequate	compatible
Washington	2008	adequate	compatible
Wisconsin	2009	adequate	compatible

SUMMARY OF NRC RADIOACTIVE MATERIALS PROGRAMS' ADEQUACY STATUSES
(As of March 5, 2013)

REGION	REVIEW YEAR	ADEQUACY FINDING
HQ SS&D	2010	adequate
Region I	2010	adequate
Region III	2012	adequate
Region IV	2009	adequate

**IMPEP REPORT TRACKING
FISCAL YEAR 2012**

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
California	10/11	98
Rhode Island	10/11	101
Minnesota	11/11	102
Arizona	3/12	91
Louisiana	4/12	111*
Tennessee	4/12	101
South Carolina	6/12	105*
Kentucky	5/12	105*
Iowa	8/12	101
NRC RIII	9/12	109*

*Delays attributed to report concurrence

HEIGHTENED OVERSIGHT AND MONITORING CHART

(As of March 5, 2013)

State	RSAO	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
HEIGHTENED OVERSIGHT					
Georgia	Orendi	10/22-26/12	Management Review Board 1/17/13	Bimonthly Call 4/2013	<ol style="list-style-type: none"> 1. Bimonthly calls 2. Program Improvement Plan 3. Next IMPEP: FY 2014 4. Probation decision pending
New York	Janda	6/6-16/11	Management Review Board 3/5/13	Bimonthly call 5/2013	<ol style="list-style-type: none"> 1. Quarterly calls 2. Status Reports due no later than 5 days prior to calls 3. Next IMPEP: FY 2013
North Dakota	Erickson	4/4-8/11	Bimonthly Call 12/6/12	Followup IMPEP 4/2013	<ol style="list-style-type: none"> 1. Bimonthly calls 2. Status Reports due 2 weeks prior to calls 3. Next IMPEP: FY 2013
MONITORING					
California	Erickson	10/17-21/11	Periodic Meeting 1/24/13	Quarterly Call 4/2013	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY 2015
Kentucky	Orendi	6/11-15/12	Quarterly Call 2/27/13	Quarterly Call 5/2013	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY 2016
New Hampshire	Janda	10/2-5/12	Management Review Board 12/18/12	Quarterly Call 4/2013	<ol style="list-style-type: none"> 1. Calls every four months 2. Next IMPEP: FY 2017
Rhode Island	Orendi	10/24-28/11	Management Review Board 4/2/12	Quarterly Call 7/2013	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY 2016 (October 2015)