

Comment Summary for RCPD-14-014: Draft White Paper Discussing Performance-Based Compatibility and Integrated Materials Performance Evaluation Program (IMPEP) Metrics

ITEM	COMMENT
1	Commenter believed the draft White Paper could have been more direct and simple by stating that the policy statements cover the operational goals of an effective regulatory program (Adequacy & Compatibility) and how to review a regulatory program to assure it is meeting operational goals (Statements of Principles and Policies).
2	Commenter believed the intent of the paper is to provide maximum flexibility to Agreement States to meet operational goals and to provide appropriate and adequate training to IMPEP team members and members of the Management Review Board (MRB) to provide a consistent review process that is more performance based.
3	Commenter noted that while the two policy statements were published on the same date, their origins and development were very different, both in date and content.
4	Commenter stated that there is no clear cut line between adequacy and compatibility and provided examples and asked additional questions.
5	Commenter suggested not making assignments but to go through each of the performance indicators, state the facts, and then make any needed recommendations about the program in the summaries (executive and comprehensive) citing that this would give the MRB the data they need to assess the IMPEP review and the overall regulatory program.
6	Nine commenters believed that the problem [with IMPEP] is inconsistent interpretation and application of performance matrices, by both the IMPEP teams and the MRBs. Commenters suggested focusing on providing IMPEP teams and MRB members with adequate and appropriate training, which should result in a more consistent review of currently existing performance matrices. One commenter noted emphasis on additional training for and NRC Management supervision of IMPEP Team Leaders.
7	Eight commenters disagreed with consolidating six possible outcomes into three. Commenters did not believe that a change to the IMPEP metrics is needed. Commenters stated concerns with the limited options being proposed providing less of a description of the status of a program than is available currently and giving flexibility to the IMPEP team through their review and judgement adding flexibility in a subjective and inconsistent manner. A third commenter stated that proposed changes do not provide the Agreement States flexibility needed to run programs and that applying the proposed metrics to assign a grade to an Agreement State moves to a more prescriptive type audit, similar to what was done previously, instead of a performance-based audit. The fourth commenter believed the proposed metrics are too rigid for a performance-based philosophy, which may give the team and MRB fewer options and could result in severe penalties for relatively minor infractions.
8	Four commenters questioned the use of the term "holistic". One commenter asked if it was meant to equate to "comprehensive". Two commenters recommended that this concept be defined and expanded in the document to clarify.
9	Two commenters questioned the term and intent of "significant rules". One commenter stated that no insignificant rules should exist. Commenter further stated that if a rule is deemed necessary, it is, therefore, significant. Commenter believed if a rule is assigned a compatibility "A", "B", or "C", it should have extremely high, very high, or high significance, both for health and safety and for nationwide consistency. Second commenter preferred for the emphasis to fall on the level of local approval (e.g. if a rule has made it to legislative review but not approved or been found in conflict with other local requirements, the state should be shown consideration.)

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10	Commenter believed that adequacy is more important than compatibility stating that if a program is found to be adequate to protect public health and safety, the program should also be found to be compatible. Similarly, a program found to be inadequate should also be found incompatible. Commenter further stated that explaining the equal importance of NRC compatibility is both difficult and confusing and may also require additional financial resources and staff. Commenter did not support any change to the current IMPEP metrics as long as adequacy and compatibility have equal status.
11	Commenter questioned if it is the intent of the NRC for required follow-up actions (recommendations) be legally binding. If so, commenter questioned how, as this may require changes to a State's Letter of Agreement. Commenter suggested that the paragraph be revised or removed.
12	Two commenters did not agree that required follow-up actions should replace the current use of performance recommendations because recommendations are intended to be constructive and promote improvement but a follow-up to the NRC on a recommendation may not be necessary. One commenter stated that "follow-up actions" appeared to be prescriptive language directed toward licensees that would need to correct performance issues (noting Agreement States are not licensees) and that "recommendations" sounded much more positive.
13	Three commenters indicated it would be useful to identify a list of elements besides regulations that go into compatibility to eliminate inconsistencies.
14	Commenter stated that any use of metrics in the IMPEP process needs to be carefully considered and be part of the Management Directives and not the policy statement.
15	Commenter noted that in 2004, NRC's IMPEP program was selected among the top 50 programs (from a pool of nearly 1000 applicants) for the "Innovations in American Government Awards" sponsored by the Ash Institute for Democratic Governance and Innovation at Harvard University's John F. Kennedy School of Government and administered in partnership with the Council for Excellence in Government.
16	Two commenters agreed with concept of assigning tiered time limits in adopting rules based on significance instead of a flat 3-year time frame.
17	Two commenters stated that NRC should not combine adequacy and compatibility into a single finding.
18	Commenter suggested a method of noting a higher level of outcome for those programs that excel (e.g. reflect outcomes in cover letter to the agency director and in the summary of the report).
19	Commenter suggested including periodic reviews as a formal component of the document.
20	Commenter stated concerns that NRC has moved away from performance-based IMPEP evaluation and towards a more static, quantitative review.
21	Commenter suggested that IMPEP Teams refrain from issuing written recommendations and requiring corrective actions in areas not subject to Management Directive 5.6.
22	Commenter suggested that draft IMPEP reports not be posted to the public website or removed once the final report is issued because draft reports sometimes contain inaccurate information.
23	Commenter recommended that the appendices containing each license file reviewed and the findings be removed from IMPEP Final Reports.

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24	Commenter recommended that the MRB process be re-examined to determine how the MRB can better assure that a performance-based inspection was conducted and that consistency and integrity of the IMPEP team was maintained. Commenter added that the OAS Liaison to the MRB should have a full voting rights that count in the final MRB determination.
25	Commenter suggested that the MRB should strive to rule in a more consistent manner and cited several examples of inconsistencies.
26	Commenter recommended that the MRB members vote after all discussions and that an explanation of the vote is made, which will give early votes the benefit of hearing all comments and prevent later voters from being unfairly influenced.
27	Commenter recommended that satisfactory with needs improvement in three metrics should be the threshold for Agreement State Monitoring, instead of two.
28	Commenter noted that MD 5.6 states, in part, that the NRC shall monitor the IMPEP process and assess the uniformity and adequacy of the implementation of the program; however, the Lessons Learned Section of a majority of IMPEP MRB reports has no content.
29	Commenter requested an extension to submit comments.
30	Commenter supported an expanded performance-based approach to assessing program compatibility.
31	Commenter supported a holistic assessment for adequacy and compatibility.
32	Commenter agreed with proposed changes to IMPEP outcomes and stated that almost all IMPEP reviews will result in a finding of "Adequate and compatible for the protection of public health and safety with required follow-up actions". Commenter believed the other two outcomes will rarely be used.
33	Commenter believed there could be a situation where a program receives satisfactory but needs improvement in two or three program elements but the program issues are not significant enough to warrant monitoring or heightened oversight; therefore, the commenter recommended adding language to further clarify that the formal oversight described in the table will be considered by the MRB, but the MRB has the flexibility not to assign formal oversight based on the severity of the issues. Commenter further stated that it should be noted that some issues will not benefit from formal oversight.
34	Commenter supported a major revision of Management Directive 5.6 to incorporate the proposals outlined in the document.
35	Commenter stated that the program views the IMPEP process favorably as a means to help ensure quality and consistency in licensing, inspection, and incident management activities.
36	Commenter noted that proposed Performance Metrics give equal weighting to adequacy and compatibility and suggested that the metric, "Not Adequate and Compatible" become "Not Adequate or Compatible", since it is possible that a program could be "adequate" but not compatible (e.g., adequate in all areas but not meeting rule adoption timelines).
37	Commenter believed that the existing six metrics allow for more gradients/combinations that better define the true nature (strengths/weaknesses) of a program.
38	Commenter believed the proposed matrix descriptions may result in oversight that is too harsh and provided an example of an unintended consequence. Commenter suggested the following: no resulting oversight for "satisfactory but needs improvement for two (vs one) performance indicator; that the threshold for "monitoring" be three performance indicators of "satisfactory but needs improvement"; and the threshold for "heightened oversight" be four performance indicators of "satisfactory but needs improvement".

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39	Commenter believed it is reasonable to "weigh" IMPEP performance indicators relative to public health and safety risk factors. For example, if a "satisfactory but needs improvement" item is administrative in nature, it should not be weighted the same as something that has a significant health and safety implication. Furthermore, a program should not necessarily be placed on monitoring for two administrative "needs improvement" ratings.
40	Commenter suggested that MRB focus should be to clarify an proposed final report issues; resolve, or at least address, any Proposed Final Report conflicts; and to serve as an audit team to ensure on-site IMPEP Review Team consistency and fairness.
41	Commenter noted that the message might be stronger if the paper focused on the potential benefits of utilizing a performance-based approach to compatibility and to changing the overall IMPEP metrics rather than discussing one possible option for achieving each of these items.
42	Commenter suggested deleting descriptions on how performance-based compatibility could be achieved and how the overall IMPEP metric might be changed from the White Paper and addressing these issues in a SECY paper, where the staff could present several options for the Commission's consideration.
43	Commenter suggested that information about the comments received during the public comment period be discussed, along with feedback about how the information was used by the working group in shaping the recommendations.
44	Commenter suggested deleting second paragraph in BACKGROUND section because it does not provide any additional insight. Commenter also noted that the AEA does not use the terms "adequacy" and "compatibility" but instead uses "adequate" and "compatible".
45	Commenter suggested various editorial changes throughout the document.
46	Commenter questioned why the history of the Adequacy and Compatibility Policy Statement was included in the BACKGROUND section because it does not pertain to IMPEP metrics or a performance-based approach to a determination of compatibility. Commenter suggested discussing the history of the Statement of Principles and Policy of Agreement State Programs instead.
47	Commenter suggested mentioning where the definitions for an adequate program and compatible program originated. [BACKGROUND section]
48	Commenter noted that allowing for the use of other legally binding requirements is consistent with flexibility; however, it does not reflect a performance-based approach. Commenter suggested editing the paragraph to reflect that while the current approach allows for flexibility, it is not considered performance-based. [DISCUSSION: Performance-Based Approach for Determining Compatibility, 1 para]
49	Commenter suggested providing examples of tiered time limits or removing the statement from the White Paper and including it in the SECY Paper. [DISCUSSION: Performance-Based Approach for Determining Compatibility, 1 para]
50	Commenter noted that the first sentence is contradictory to the previous paragraph in which the working group states that the current approach is performance-based. [DISCUSSION: Performance-Based Approach for Determining Compatibility, 2 para]
51	Commenter noted that per SA-107, program elements are already included in the Non-common indicator review and should be included in the overall determination. Commenter further stated that if this was not being done, then team members should be retrained. [DISCUSSION: Performance-Based Approach for Determining Compatibility, 4 para]

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52	Commenter suggested removing the phrase "...and how a Program is graded" because NRC does not "grade" Agreement State Programs. [DISCUSSION: IMPEP Metrics, 1 para]
53	Commenter suggested removing the word "required" from the second proposed IMPEP metric outcome.
54	Commenter expressed confusion with regard to the third proposed IMPEP metric outcome: should the metric read "Not Adequate and Not Compatible" or "Not Adequate and Compatible" or "Adequate and Not Comptabile"?
55	Commenter noted that the sentence gives the appearance that this is not already a component of IMPEP, which is incorrect. [DISCUSSION: IMPEP Metrics - Adequate and Compatible for the Protection of Public Health and Safety.]
56	Commenter asked several questions regarding the implications of "required" follow-up actions [DISCUSSION: IMPEP Metrics - Adequate and Compatible for the Protection of Public Health and Safety with Required Follow-up Actions.]
57	Commenter noted differences in the proposed third performance metric, as it reads differently in format than the others.