



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 4, 2016

Matthew T. Wallen
Chief of Staff
Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509-5026

Dear Mr. Wallen:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the evaluation of Agreement State programs. Enclosed for your review is the draft IMPEP report, which documents the results of the Agreement State review held in Nebraska on January 11-15, 2016. The review team's preliminary findings were discussed with you and your staff on the last day of the review. The review team's proposed recommendations are that the Nebraska Agreement State Program be found adequate to protect public health and safety, and compatible with the NRC's program.

The NRC conducts periodic reviews of Agreement State programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with the NRC's program. The process, titled IMPEP, employs a team of NRC and Agreement State staff to assess Agreement States' and NRC Regional Offices' radioactive materials programs. All reviews use common criteria in the assessment and place primary emphasis on performance. The final determination of adequacy and compatibility of each Agreement State program, based on the review team's report, is made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager who serves as a liaison to the MRB.

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the draft report for your review and comment prior to submitting the report to the MRB. Comments are requested within 4 weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner that will be responsive to your needs.

The team will review the response, make any necessary changes to the report, and issue it to the MRB as a proposed final report. The MRB meeting is scheduled for Tuesday, April 12, 2016, at 1:00 p.m. ET. The NRC will provide invitational travel for you or your designee to attend the MRB meeting at the NRC Headquarters in Rockville, Maryland. The NRC has video conferencing capability if it is more convenient for the State to participate through this medium. Please contact me if you desire to establish a video conference for the meeting.

Mr. Wallen

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If you have any questions regarding the enclosed report, please contact me at 301-415-5804.

Thank you for your cooperation.

Sincerely,

/RA/

Paul Michalak, Acting Chief
Agreement State Programs Branch
Division of Material Safety, State, Tribal, and
Rulemaking Programs
Office of Nuclear Material Safety and Safeguards

Enclosure:
NE 2016 Draft IMPEP Report

cc: Julia Schmitt, Manager, Radiological Program

Mr. Wallen

- 2 -

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cc: Julia Schmitt, Manager, Radiological Program

Distribution: (SP08)
RErickson, RIV/RSOA
RElliott, RI
BGoretzki, AZ
DCollins, NMSS
PHenderson, NMSS
MShaffer, RIV
OAS Board

ML16033A273

OFFICE	RIII:TL	ASPB	ASPB:BC
NAME	JLynch <i>via email</i>	LDimmick	PMichalak
DATE	02/02/16	02/3/16	02/4/16

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF THE NEBRASKA AGREEMENT STATE PROGRAM

January 11-15, 2016

DRAFT REPORT

Enclosure

EXECUTIVE SUMMARY

This report presents the results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the Nebraska Agreement State Program. The review was conducted during the period of January 11-15, 2016, by a review team composed of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Arizona.

Based on the results of this review, Nebraska's performance was found satisfactory for five out of six indicators: Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Inspections, Technical Quality of Licensing Actions, and Technical Quality of Incident and Allegation Activities. The indicator Compatibility Requirements was found satisfactory, but needs improvement. The review team made one recommendation (see Section 5.0). There were no recommendations from previous IMPEP reviews to evaluate.

Accordingly, the review team recommends that the Nebraska Agreement State Program is adequate to protect public health and safety and is compatible with the NRC's program. The review team recommends that the next IMPEP review take place in approximately 4 years and that a periodic meeting be held in 2 years, as regularly scheduled, in order to review progress in the State's regulation promulgation process.

1.0 INTRODUCTION

This report presents the results of the review of the Nebraska Agreement State Program radioactive materials safety program. The review was conducted during the period of January 11-15, 2016, by a review team composed of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Arizona. The Review team members are identified in Appendix A. The review was conducted in accordance with the "Implementation of the Integrated Materials Performance Evaluation Program and Rescission of Final General Statement of Policy," published in the *Federal Register* on October 16, 1997, and NRC Management Directive 5.6 (MD 5.6), "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. Preliminary results of the review, which covered the period of October 8, 2010 to January 15, 2016, were discussed with State managers on the last day of the review.

The Nebraska Agreement State Program is administered by the Radiological Health Program (the Program) which is located within the Department of Health and Human Services (the Department). The Program Director reports to the Administrator of Environmental Health. Organization charts for the State may be found in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML16033A260.

At the time of the review, the Nebraska Agreement State Program regulated 143 specific licenses authorizing possession and use of radioactive materials. The review focused on the radioactive materials program as it is carried out under the Section 274b. (of the Atomic Energy Act of 1954, as amended) Agreement between the NRC and the State of Nebraska.

In preparation for the review, a questionnaire addressing the common and applicable non-common performance indicators was sent to the State on July 13, 2015. The State provided its response to the questionnaire on December 3, 2015. A copy of the questionnaire response may be found using the ADAMS Accession Number ML16026A614.

The review team evaluated the information gathered against the established criteria for each common and the applicable non-common performance indicator and made a preliminary assessment of the Nebraska Agreement State Program's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on October 7, 2010. The final report is available in ADAMS (Accession Number ML110110042). The results of the previous review and the status of recommendations are as follows:

Technical Staffing and Training: Satisfactory
Recommendations: None

Status of Materials Inspection Program: Satisfactory
Recommendations: None

Technical Quality of Inspections: Satisfactory
Recommendations: None

Technical Quality of Licensing Actions: Satisfactory
Recommendations: None

Technical Quality of Incident and Allegation Activities: Satisfactory
Recommendations: None

Compatibility Requirements: Satisfactory
Recommendations: None

Overall finding: Adequate to protect public health and safety and compatible with the NRC's program.

3.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC regional and Agreement State radioactive materials programs. These indicators are (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

3.1 Technical Staffing and Training

The ability to conduct effective licensing and inspection programs is largely dependent on having a sufficient number of experienced, knowledgeable, well-trained technical personnel. Under certain conditions, staff turnover could have an adverse effect on the implementation of these programs, and thus could affect public health and safety. Apparent trends in staffing must be explored. Review of staffing also requires a consideration and evaluation of the levels of training and qualification. The evaluation standard measures the overall quality of training available to, and taken by, materials program personnel.

a. Scope

The review team used the guidance in State Agreements procedure SA-103, "Reviewing the Common Performance Indicator: Technical Staffing and Training," and evaluated the State's performance with respect to the following performance indicator objectives:

- A well-conceived and balanced staffing strategy has been implemented throughout the review period.
- Agreement State training and qualification program is equivalent to NRC Inspection Manual Chapter (IMC) 1248, "Formal Qualifications Program for Federal and State Material and Environmental Management Programs."
- Qualification criteria for new technical staff are established and are being followed or that qualification criteria will be established if new staff members are hired.
- Any vacancies, especially senior-level positions, are filled in a timely manner.

- There is a balance in staffing of the licensing and inspection programs.
- Management is committed to training and staff qualification.
- Individuals performing materials licensing and inspection activities are adequately qualified and trained to perform their duties.
- License reviewers and inspectors are trained and qualified in a reasonable period of time.

b. Discussion

The Nebraska Agreement State Program is composed of the Administrator of Environmental Health, the Radiological Program Manager, and three Health Physicist technical staff members which equals 3.8 full time equivalents for the radioactive materials program. Currently, there are no vacancies. During the review period, one Health Physicist retired and was replaced within one month by a staff member from the x-ray program. That individual is currently going through the qualification process. Nebraska has a training and qualification manual equivalent to the NRC's IMC 1248.

c. Evaluation

Staffing in the Nebraska Program has been very stable for many years. The review team evaluated the State's training procedure, which was revised in December 2015, and determined that it was equivalent to IMC 1248.

The review team determined that, during the review period, the Nebraska program met the performance indicator objectives listed in Section 3.1.a.

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

3.2 Status of the Materials Inspection Program

Periodic inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety practices. The frequency of inspections is specified in the NRC's IMC 2800, "Materials Inspection Program," and is dependent on the amount and kind of material, the type of operation licensed, and the results of previous inspections. There must be a capability for maintaining and retrieving statistical data on the status of the inspection program.

a. Scope

The review team used the guidance in State Agreements procedure SA-101, "Reviewing the Common Performance Indicator: Status of the Materials Inspection Program," and evaluated the State's performance with respect to the following performance indicator objectives:

- Initial inspections and inspections of Priority 1, 2, and 3, licensees are performed at the frequency prescribed in NRC IMC 2800.
- Candidate licensees working under reciprocity are inspected in accordance with the criteria prescribed in IMC 1220, "Processing of NRC Form 241, Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, and Offshore Waters, and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20."
- Deviations from inspection schedules are normally coordinated between technical staff and management.
- There is a plan to perform any overdue inspections and reschedule any missed or deferred inspections; or a basis has been established for not performing any overdue inspections or rescheduling any missed or deferred inspections.
- Inspection findings are communicated to licensees in a timely manner (30 calendar days, or 45 days for a review team inspection, as specified in IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports").

b. Discussion

Nebraska's inspection frequency is equivalent to similar license types found in IMC 2800. The Program performed a total of 156 Priority 1, 2, 3 and initial inspections over the review period, none of which were conducted overdue. Initial inspections of new licenses were performed within 12 months of license issuance. An evaluation of 27 inspection reports indicated that none of the inspection findings were communicated to the licensees beyond Nebraska's goal of 30 days following the inspection exit. The Program inspected the following percentages of candidate licensees working under reciprocity during the review period: 19 percent in 2010, 14 percent in 2011, 18 percent in 2012, 20 percent in 2013, 25 percent in 2014, and 21 percent in 2015.

c. Evaluation

The Program tracked reciprocity percentages and identified that it was not meeting the 20-percent goal early in the review period. Greater emphasis was placed on the goal and the percentage trended upward, reaching the goal for the past 3 years.

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.2.a.

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

3.3 Technical Quality of Inspections

Inspections, both routine and reactive, provide assurance that licensee activities are carried out in a safe and secure manner. Accompaniments of inspectors performing

inspections, and the critical evaluation of inspection records are used to assess the technical quality of a program's inspection capability.

a. Scope

The review team used the guidance in State Agreements procedure SA-102, "Reviewing the Common Performance Indicator: Technical Quality of Inspections," and evaluated the State's performance with respect to the following performance indicator objectives:

- Inspections of licensed activities focus on health, safety, and security.
- Inspection findings are well-founded and properly documented in reports.
- Management promptly reviews inspection results.
- Procedures are in place and used to help identify root causes and poor licensee performance.
- Inspections address previously identified open items and violations.
- Inspection findings lead to appropriate and prompt regulatory action.
- Supervisors conduct annual accompaniments of each inspector to assess performance and assure consistent application of inspection policies.
- For programs with separate licensing and inspection staffs, to verify that procedures are established and followed to provide feedback information to license reviewers.
- For Agreement States, to determine if inspection guides are consistent with NRC guidance.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

b. Discussion

The review team interviewed inspectors and evaluated a sampling of inspection reports and enforcement documentation for 27 of the 156 Priority 1, 2, 3 and initial inspections conducted during the review period. The casework reviewed included inspections conducted by all of Nebraska's three inspectors and covered medical, industrial, commercial, academic, research, and service provider licenses.

Accompaniments of two inspectors were conducted by one review team member in September 2015. The inspectors were found to be well-prepared, thorough, and conducted performance-based inspections. The inspections were adequate to assess radiological health, safety and security. The third inspector was not qualified to perform independent inspections at the time of this review.

The Program has a policy of performing annual supervisory accompaniments for each of the materials inspectors. This accompaniment is performed either by the supervisor or a peer. The review team found that over the review period, a total of 18 inspector accompaniments had been performed. The review team noted that no accompaniments were performed in 2011, however, each inspector had been accompanied during the preceding and following years.

c. Evaluation

The Program Manager stated that the reason why the accompaniments were not performed in 2011 was due to an increase in emergency response exercises during that time, along with the fact that no team inspections were due during that timeframe.

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.3.a.

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Inspections, be found satisfactory.

3.4 Technical Quality of Licensing Actions

The quality, thoroughness, and timeliness of licensing actions can have a direct bearing on public health and safety, and security. An assessment of licensing procedures, actual implementation of these procedures, and documentation of communications and associated actions between the State licensing staff and the regulated community will be a significant indicator of the overall quality of the program.

a. Scope

The review team used the guidance in State Agreements procedure SA-104, "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated the State's performance with respect to the following performance indicator objectives:

- Licensing action reviews are thorough, complete, consistent, and of acceptable technical quality with health, safety, and security issues properly addressed.
- Essential elements of license applications have been submitted and elements meet current regulatory guidance (e.g. financial assurance, ICs, pre-licensing guidance).
- License reviewers, if applicable, have the proper signature authority for the cases they review independently.
- License conditions are stated clearly and are inspectable.
- Deficiency letters clearly state regulatory positions and are used at the proper time.
- Reviews of renewal applications demonstrate a thorough analysis of a licensee's inspection and enforcement history.
- Applicable guidance documents are available to reviewers and are followed (e.g., NUREG-1556 series, pre-licensing guidance, regulatory guides, etc.).
- Licensing practices for risk significant radioactive materials are appropriately implemented including ICs and fingerprinting orders (or Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled and secured.

b. Discussion

During the review period, the State of Nebraska performed 919 radioactive materials licensing actions. The review team evaluated 23 of these licensing actions which included casework for 5 current and former license reviewers. The licensing actions selected for review included eight new applications, six amendments, four renewals, and five terminations. The review team evaluated casework which included the following license types and actions: broad scope, medical diagnostic and therapy, commercial manufacturing and distribution, industrial radiography, research and development, academic, nuclear pharmacy, gauges, panoramic irradiators, decommissioning actions, and financial assurance.

The Program has three Health Physicists and the Program Manager that are qualified license reviewers. Once completed, all licensing actions are peer reviewed and approved by another qualified license reviewer before submittal to the Program Manager for final review and signature.

The review team assessed new applications for the Program's implementation of the pre-licensing requirements. The Program implements the "Checklist to Provide a Basis for Confidence That Radioactive Material Will Be Used as Specified on a License" and the "Checklist for Risk-Significant Radioactive Material." The team found that the Program was conducting pre-licensing visits on 100 percent of the applicants regardless of whether or not they are known entities. Licensees that require increased controls receive an onsite security review prior to issuance of the license.

Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.4.a.

c. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory.

3.5 Technical Quality of Incident and Allegation Activities

The quality, thoroughness, and timeliness of response to incidents and allegations of safety concerns can have a direct bearing on public health and safety. An assessment of incident response and allegation investigation procedures, actual implementation of these procedures, internal and external coordination, and investigative and follow-up procedures and actions will be a significant indicator of the overall quality of the program.

a. Scope

The review team used the guidance in State Agreements procedure SA-105, "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation

Activities,” and evaluated the State’s performance with respect to the following performance indicator objectives:

- Incident response, investigation, and allegation procedures are in place and followed.
- Response actions are appropriate, well-coordinated, and timely.
- On-site responses are performed when incidents have potential health, safety or security significance.
- Appropriate follow-up actions are taken to ensure prompt compliance by licensees.
- Follow-up inspections are scheduled and completed, as necessary.
- Notifications are made to the NRC Headquarters Operations Center for incidents requiring a 24-hour or immediate notification to the Agreement State or NRC.
- Incidents are reported to the Nuclear Material Events Database (NMED).
- Allegations are investigated in a prompt, appropriate manner.
- Concerned individuals are notified of investigation conclusions.
- Concerned individuals’ identities are protected, as allowed by law.

b. Discussion

During the review period, the Program reported 25 incidents to the NMED database. Eleven of the reports involved lost tritium exit signs. The remaining 14 incidents were evaluated by the review team and involved reports of lost or stolen radioactive material, damaged equipment, medical events and equipment failures. When notified of an incident, management and staff meet to discuss the incident and determine what the appropriate level of response should be. This can range anywhere from an immediate response up to reviewing the event during the next inspection interval. Those determinations are made based on both the circumstances and the health and safety significance of the incident. The review team found that Nebraska’s evaluation of incidents notifications and their response to those incidents was well balanced, complete and comprehensive.

During the review period, one allegation was directly received by the Program. No allegations were referred by the NRC during the review period. The review team evaluated the completed casework and found that the Program took prompt and appropriate action in response to the concern raised. The concerned individual was notified of the findings. The team found that the Program adequately protected the concerned individual’s identity.

c. Evaluation

The team determined that, during the review period, Nebraska met the performance indicator objectives listed in Section 3.5.a.

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

4.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State programs: (1) Compatibility Requirements, (2) Sealed Source and Device (SS&D) Evaluation Program, (3) Low-Level Radioactive Waste (LLRW) Disposal Program, and (4) Uranium Recovery Program. The NRC's Agreement with Nebraska does not relinquish regulatory authority for a uranium recovery program. In addition, with regard to the non-common performance indicators for SS&D and LLRW, although Nebraska has authority to conduct SS&D evaluations and regulate LLRW disposal, the State did not perform any activities related to these indicators during the review period. Therefore, only the first non-common performance indicator, Compatibility Requirements, applied to this review.

4.1 Compatibility Requirements

State statutes should authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health, safety, and security. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. The NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety should be adopted in a time frame so that the effective date of the State requirement is not later than 3 years after the effective date of the NRC's final rule. Other program elements, as defined in Appendix A of State Agreements procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements," that have been designated as necessary for maintenance of an adequate and compatible program should be adopted and implemented by an Agreement State within 6 months following the NRC designation.

a. Scope

The review team used the guidance in State Agreements procedure SA-107, "Reviewing the Non-Common Performance Indicator: Compatibility Requirements," and evaluated the State's performance with respect to the following performance indicator objectives. A complete list of regulation amendments can be found on the NRC website at the following address: http://nrc-stp.ornl.gov/rss_regamendments.html.

- The Agreement State program does not create conflicts, duplications, gaps, or other conditions that jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act, as amended.
- Regulations adopted by the Agreement State for purposes of compatibility or health and safety were adopted no later than 3 years after the effective date of the NRC

regulation.

- Other program elements, as defined in SA-200 that have been designated as necessary for maintenance of an adequate and compatible program have been adopted and implemented within 6 months of NRC designation.
- The State statutes authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement.
- The State is authorized through its legal authority to license, inspect, and enforce legally binding requirements such as regulations and licenses.
- Impact of sunset requirements, if any, on the State's regulations.

b. Discussion

Nebraska became an Agreement State on October 1, 1966. The Nebraska Agreement State Program's statutory authority is located in Title 180 of the Nebraska Administrative Code. The Department is designated as the State's radiation control agency. There were eight legislative amendments passed during the review period that affected the radiation control program:

- Radiation Control Act
- Transportation of High-level Radioactive Waste and Transuranic Waste
- Certified Registered Nurse Anesthetist Practice Act
- Advanced Practice Registered Nurse Practice Act
- Nebraska Emergency Management Act
- Emergency, Governor, Civil Defense Assumption of Control of State Communication System
- Administrative Procedures Act
- Low-Level Radioactive Waste Act

Of those, the Administrative Procedures Act, adopted in 2011, which provided a directive for the creation, adoption, and revision of regulations, appears to have affected the Program the most. As described by the Program Manager, the law requires that all State rules that are legislatively mandated must be adopted within 12 months and that those rules have priority and are processed before rules that are not legislatively mandated. Other rules, such as rules required by the NRC as a matter of compatibility, must wait in the queue for the legislatively mandated rules to be processed first. If during the waiting period another legislatively mandated rule is passed, it too will be processed before other non-legislatively mandated rules currently waiting in the queue. In conjunction with this new process, the Program is now only allowed to submit one rule package annually, so as amendments are developed by the Program, they are set aside and collected until they are given permission to submit their rule packages.

This new law was previously described to the NRC during the 2012 periodic meeting where the Program Manager expressed her concerns about the Program's future ability to remain compatible with NRC requirements for timely rule adoption. Prior to the passing of this Act, the Program's process for rulemaking took approximately 12 months from when they received an amendment from NRC to when those regulations became

final. At the time of the 2012 periodic meeting, the Program was tracking its first rule package containing five NRC amendments under this new legislatively mandated process. At the time of the meeting the rule package had already been in the process for nearly 900 days. Of those 900 days, the rule package had taken 85 days for the Program to develop, 67 days for the public hearing process, and the rest of that time the package had been waiting in queue for a legal review. That rule package was subsequently adopted late as described later in this section.

During the review period, 12 amendments were issued by the NRC. Nebraska adopted two of the amendments timely. Of the 10 additional amendments, 5 were adopted late as described earlier in this section and 5 additional amendments are still outstanding and are currently late. A complete list of NRC's regulation amendments can be found on the NRC website at the following address: https://scp.nrc.gov/rss_regamendments.html.

At the time of this review, the following 5 amendments were overdue:

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40, and 70 amendments (76 FR 35512), that were due for Agreement State adoption by December 17, 2015.
- "Licenses, Certifications, and Approvals for Materials Licensees," 10 CFR Parts 30, 36, 39, 40, 70, and 150 amendments (76 FR 56951), that were due for Agreement State adoption by November 14, 2014.
- "Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste," 10 CFR Part 71 amendment (77 FR 34194), that was due for Agreement State adoption by August 10, 2015.
- "Technical Corrections," 10 CFR Parts 30, 34, 40 and 71 amendments (77 FR 39899), that were due for Agreement State adoption by August 6, 2015.
- "Requirements for Distribution of Byproduct Material," 10 CFR Parts 30, 31, 32, 40 and 70 amendments (77 FR 43666), that were due for Agreement State adoption by October 23, 2015.

Because a majority of the delay in the process appears to occur within the legal department, the review team met with Department attorneys to discuss the problem and to see if other options were available to the Program. The attorneys acknowledged that while the new process has negatively affected the Radiation Control Program, it has had an equally negative impact on every Program within the Department. They noted that a significant part of the delay is a result of a reduction in legal department staffing. Previously, four individuals were assigned to regulation reviews, now only one is assigned. There is also no established prioritization scheme other than placing them in chronological receipt order behind the legislatively mandated regulations. The attorneys indicated that under a new administration, they may now be able to use alternate methods to enforce regulatory changes such as incorporation by reference, the use of which was previously unavailable to them.

c. Evaluation

The review team reviewed the content of the late or open amendments and noted that most of them contained a significant number of Compatibility A and B designations, which by not adopting them in a timely manner, creates regulatory gaps that have the potential to jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act, as amended. The review team further noted that of the 12 amendments required for adoption by the State during the review period, 10 were either adopted late or are currently late. All of the late amendments occurred following the passage of the Administrative Procedures Act of 2011.

The delays in the State's regulation development process resulted in the failure to timely adopt approximately 83 percent of all amendments required to be adopted over the review period. The review team recommends that the State evaluate its regulation development program and implement appropriate measures to ensure that rules or generic legally binding requirements are adopted in a timely manner to meet compatibility requirements.

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the review team recommends that Nebraska's performance with respect to the indicator, Compatibility Requirements, be found satisfactory, but needs improvement.

5.0 SUMMARY

As noted in Sections 3.0 and 4.0 above, Nebraska's performance was found satisfactory for five out of six performance indicators reviewed, and satisfactory, but needs improvement, for the indicator Compatibility Requirements. The review team made one recommendation regarding program performance by the State.

Accordingly, the review team recommends that the Nebraska Agreement State Program be found adequate to protect public health and safety and compatible with the NRC's program. Based on the results of the current IMPEP review, the review team recommends that the next full IMPEP review take place in approximately 4 years, and that a periodic meeting be held, as normally scheduled, in 2 years in order to review progress in the State's rule development program.

Below is the review team's recommendation, as mentioned in the report, for evaluation and implementation by the State:

The review team recommends that the State evaluate its regulation development program and implement appropriate measures to ensure that rules or generic legally binding requirements are adopted in a timely manner to meet compatibility requirements.

LIST OF APPENDICES

Appendix A IMPEP Review Team Members

Appendix B Inspection Accompaniments

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Jim Lynch, Region III	Team Leader Technical Staffing and Training
Randy Erickson, Region IV	Technical Quality of Incident and Allegation Activities Compatibility Requirements Inspector Accompaniments
Robin Elliott, Region I	Technical Quality of Licensing Actions
Brian Goretzki, Arizona	Status of Materials Inspection Program Technical Quality of Inspections

APPENDIX B

INSPECTION ACCOMPANIMENTS

The following inspection accompaniments were performed prior to the on-site IMPEP review:

Accompaniment No.: 1	License No.: 01-04-01
License Type: Large Medical & HDR	Priority: 2
Inspection Date: 9/21/15	Inspector: HS

Accompaniment No.: 2	License No.: 10-08-01
License Type: Panoramic Irradiator	Priority: 2
Inspection Date: 9/22/15	Inspector: BM