



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

July 28, 2017

J. C. Borrego, Deputy Secretary
Office of the Secretary
New Mexico Environment Department
1190 Saint Francis Drive
Room N-4050
Santa Fe, NM 87505

Dear Mr. Borrego:

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 New Mexico on June 26-30, 2017. 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 New Mexico 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 four 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 Management Review Board meeting is scheduled for Thursday, September 28, 2017, at 2:00 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.

J. Borrego

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

Enclosure:
NM 2017 Draft IMPEP Report

cc: Santiago Rodriguez, Chief, Radiation Control Bureau

SUBJECT: NEW MEXICO FY2017 DRAFT IMPEP REPORT

DATE: July 28, 2017.

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF THE NEW MEXICO AGREEMENT STATE PROGRAM

JUNE 26-30, 2017

DRAFT REPORT

Enclosure

EXECUTIVE SUMMARY

This report presents the results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the New Mexico Agreement State Program. The review was conducted during the period of June 26-30, 2017, by a team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the States of Tennessee and Minnesota.

Based on the results of this review, New Mexico's performance was found satisfactory for five out of six performance 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 to be satisfactory, but needs improvement, primarily due to the State's late adoption of most compatibility required regulations during the review period.

The team made no new recommendations and determined that the recommendation from the 2013 IMPEP review, regarding the filling of program vacancies, should remain in place until staffing has fully stabilized (see Section 2.0).

Accordingly, the team recommends that the New Mexico Agreement State Program be found adequate to protect public health and safety and compatible with NRC's program. The team recommends that the next IMPEP review take place in approximately four years.

1.0 INTRODUCTION

This report presents the results of the review of the New Mexico Agreement State radioactive materials safety program. The review was conducted during the period of June 26-30, 2017, by a team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the States of Tennessee and Minnesota. 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 June 29, 2013 to June 30, 2017, were discussed with New Mexico managers on the last day of the review.

In preparation for the review, a questionnaire addressing the common and applicable non-common performance indicators was sent to New Mexico on November 1, 2016. New Mexico provided its response to the questionnaire on June 14, 2017. A copy of the questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML17166A284.

The New Mexico Agreement State Program is administered by the Radiation Control Bureau (the Bureau) which is located in the Environmental Protection Division (the Division). The Division is part of the Environment Department (the Department). Organization charts for New Mexico are available in ADAMS (Accession Number ML17166A276).

At the time of the review, the New Mexico Agreement State Program regulated 211 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 New Mexico.

The 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 New Mexico Agreement State Program's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on June 28, 2013. The final report is available in ADAMS (Accession Number ML13255A254). The results of the review and the status of the recommendation is as follows:

Technical Staffing and Training: Satisfactory, but Needs Improvement
Recommendation: The team recommends that the Bureau management continue to aggressively pursue the filling of the current vacancies in order to ensure the program's continued adequacy and compatibility. (Section 3.1 of the 2013 IMPEP report)

Status: The impediments to hiring noted during the 2013 review have been resolved and the team concluded that the factors contributing to a Satisfactory, but Needs Improvement finding no longer apply. However, because the Bureau experienced staff

turnover throughout the review period and still had four vacancies at the time of the 2017 review, the team believes that the recommendation should remain in place until staffing has fully stabilized. This recommendation is open.

Status of Materials Inspection Program: Satisfactory
Recommendation: None

Technical Quality of Inspections: Satisfactory
Recommendation: None

Technical Quality of Licensing Actions: Satisfactory
Recommendation: None

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

Compatibility Requirements: Satisfactory
Recommendation: 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 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 team used the guidance in State Agreements procedure SA-103, "Reviewing the Common Performance Indicator: Technical Staffing and Training," and evaluated New Mexico'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 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 New Mexico Agreement State Program is managed by a Bureau Chief who has responsibility for oversight of three organizations within the Bureau. These include the Radiation Protection Program, the Office of Nuclear Workers, and the Waste Isolation Pilot Plant (WIPP) Emergency Response Coordination Program. The Radiation Protection Program portion of the Bureau is responsible for the licensing and inspection of radioactive materials licensees within the State.

The Bureau is comprised of the Bureau Chief, a Program Manager, and eight additional full-time equivalents. During this review period, four staff members left the program and four new staff members were hired. The Bureau currently has four vacancies. One of the vacant positions is the Program Manager position which has been vacant for approximately two years. The other vacant positions have been open from one to eight months, primarily due to a hiring freeze that was in place from approximately February through May 2017. The team determined that the Bureau has a training and qualification manual compatible with IMC 1248.

c. Evaluation

The team looked at the staffing history for the Bureau and noted that at the time of the 2013 IMPEP review, the Bureau had been dealing with significant staff turnover and position vacancy issues for several years

During the 2013 IMPEP review, it was noted that several impediments had contributed to the staffing issue. These included funding shortfalls, hiring freezes, and administrative delays in filling the management positions. Because of these impediments, the 2013 team made a recommendation that Bureau management continue to aggressively pursue the filling of the current vacancies in order to ensure the program's continued adequacy and compatibility. The team recommended that the Bureau be found satisfactory, but needs improvement for this indicator. The MRB agreed with the team's recommendations.

Because of this staffing instability, NRC managers requested another meeting with Division management to discuss the long standing vacancy issues, and a letter of support was issued by NRC to the Department's Deputy Secretary.

At the time of the 2017 IMPEP review, the team found that most of the impediments to hiring had been resolved, but over the review period, a total of four additional staff members had left the Bureau and that three staff vacancies and one management vacancy currently existed. The acting Bureau Chief was now permanently in that position, but the Program Manager position still remained open. The Bureau Chief informed the team that a Program Manager selection had recently been made, but the paperwork associated with that selection was still being processed. He also notified the team that hiring packages for two of the remaining three staff vacancies were being processed and the positions were about to be advertised. The remaining vacancy was to be held open due to a potential minor reorganization effort that could result in an additional staff transfer to the Bureau.

d. Results

The team evaluated the 2013 IMPEP review finding of satisfactory, but needs improvement for this indicator, and compared the staffing situation that was in place at that time and the issues contributing to that finding, with the staffing issues noted during this review. While this review did identify a few issues that could be attributed to staffing vacancies and to a greater extent the management vacancy, specifically issues involving reciprocity in Section 3.2, pre-licensing documentation in Section 3.4, and incident and allegation documentation as noted in Section 3.5, the team does not believe the same hiring conditions exist today that existed during the 2013 IMPEP review. The impediments to hiring noted at that time have been resolved and the team concluded that the factors contributing to a satisfactory, but needs improvement finding no longer applies. As the Bureau had experienced staff turnover throughout the review period and still had vacancies at the time of the review, the team believes that the recommendation from the 2013 IMPEP review should remain in place until staffing has fully stabilized. The team therefore recommends that Bureau management continue to aggressively pursue the filling of the current vacancies in order to ensure the program's continued adequacy and compatibility.

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

3.2 Status of 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 NRC IMC, Chapter 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 team used the guidance in State Agreements procedure SA-101, "Reviewing the Common Performance Indicator: Status of Materials Inspection Program," and

evaluated New Mexico'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 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 team inspection, as specified in IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports").

b. Discussion

The Bureau performed 233 Priority 1, 2, and 3 and initial inspections during the review period, of which 9 inspections were conducted overdue. Three initial inspections were overdue at the time of the review. The team calculated that the Bureau performed 4.8 percent of its inspections overdue during the review period.

The team compared the Bureau's inspection frequencies for various types of licenses to those prescribed by IMC 2800. The Bureau's license categories are similar to those prescribed in IMC 2800; however, most categories of licenses are inspected more frequently, including nuclear pharmacy, mobile Positron Emission Tomography, medical facilities, research and development, academic broad, well logging, and both fixed and portable nuclear gauge licenses. The Bureau does not have any inspection intervals longer than three years, whereas IMC 2800 prescribes inspection intervals of up to five years for several license types.

The team's evaluation of 21 inspection reports indicated that 4 of the inspection findings were communicated to the licensees beyond the Bureau's goal of 30 days after the inspection exit. All other inspection reports reviewed were issued promptly, usually within a few days of the inspection date.

The team evaluated reciprocity inspections for the review period. The Bureau met the IMC 1220 goal of 20 percent during the first two years of the review period but fell short in 2015 (14 percent) and 2016 (11 percent).

c. Evaluation

The Bureau has a plan to conduct all outstanding overdue initial inspections by July 31, 2017. There appeared to be no significant impact to health and safety from these occurrences.

As noted in Section 3.1, the vacant manager position and depleted staffing levels have resulted in the reciprocity area not receiving adequate oversight in recent years. The Bureau has a plan to accomplish the needed reciprocity inspections for 2017 to meet the 20 percent goal for candidate inspections.

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

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that New Mexico'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 an Agreement State's inspection program.

a. Scope

The team used the guidance in State Agreements procedure SA-102, "Reviewing the Common Performance Indicator: Technical Quality of Inspections," and evaluated New Mexico'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, or senior staff, conduct annual accompaniments of each inspector to assess performance and assure consistent application of inspection policies.
- For programs with separate licensing and inspection staffs, procedures are established and followed to provide feedback information to license reviewers.
- For Agreement States, inspection guides are consistent with NRC guidance.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

b. Discussion

The team evaluated the inspection reports, enforcement documentation, and interviewed inspectors involved in materials inspections for 21 inspections conducted during the review period. The casework reviewed included inspections conducted by five current and three previously employed inspectors and covered medical, industrial, commercial, academic, research, and service licenses.

Team members accompanied three program inspectors in April and June 2017. During the accompaniments, the inspectors demonstrated appropriate inspection techniques and knowledge of the regulations, and conducted performance-based inspections. The inspectors were trained and well-prepared for the inspections and were thorough in their inspections of the licensees' radiation safety programs. The inspectors conducted interviews with appropriate personnel, observed licensed operations, conducted confirmatory measurements, and utilized good health physics practices. The inspections were adequate to assess radiological health and safety and security at the licensed facilities.

The team was challenged in being able to locate all inspection reports selected in the review, as the Bureau was somewhat disorganized in the manner of their file keeping. In some cases, correspondence related to inspections was stored separately from the inspection reports. Ultimately, all correspondence and inspection reports were located, with the exception of one license, for which the inspection report could not be located.

The team followed-up on previous noted observations from the 2009 and 2013 New Mexico IMPEP reviews. The 2009 and 2013 teams noted that the text of violations that were issued were not always clear and noted that the letters vaguely stated the regulatory requirements and did not always specify which portions of the requirement was violated by the licensee. This team noted marked improvement in the text, structure, and format of violations in the casework reviewed.

c. Evaluation

The team noted that although there were some instances where the inspection findings were not well documented, it was clear that the findings were promptly evaluated by management and well communicated to licensees.

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

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that New Mexico'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, as well as security. An assessment of licensing procedures, actual implementation of those procedures, and documentation of communications and associated actions between the New Mexico licensing staff and regulated community will be a significant indicator of the overall quality of the licensing program.

a. Scope

The team used the guidance in State Agreements procedure SA-104, "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated

New Mexico'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 are consistent with current regulatory guidance (e.g., financial assurance, increased controls, pre-licensing guidance).
- License reviewers, if applicable, have the proper signature authority for the cases they review independently.
- License conditions are stated clearly and can be inspected.
- 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 increased controls and fingerprinting orders (Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled, and secured.

b. Discussion

During the review period, New Mexico performed approximately 640 radioactive materials licensing actions. The team evaluated 26 radioactive materials licensing actions, including 4 new applications, 12 amendments, 4 renewals, and 6 terminations. The team evaluated casework which included the following license types and actions: broad scope, medical diagnostic and therapy, accelerator, commercial manufacturing and distribution, industrial radiography, research and development, academic, nuclear pharmacy, gauges, self-shielded irradiators, well logging, service providers, decommissioning actions, and financial assurance. The casework sample represented work from the Bureau's only license reviewer.

c. Evaluation

Licensing actions are reviewed using NUREG-1556 series and NUREG-1757 for decommissioning activities. Deficiencies are communicated and documented primarily through e-mail. Security-related documents are placed in the licensee files under a cover page indicating "Official Use Only." Files are kept in a locked room with no public access.

At the time of the review, the Bureau's process for approving new licenses involved several checks to determine the validity of the business entity and its management; including state tax identification verification, internet searches, etc. Technical deficiencies in a license application are then addressed with the potential licensee. Prior to completion of the license, an inspector will perform a pre-licensing site visit. The team determined that the Bureau was performing pre-licensing verification similar to the guidance document but not consistently documenting the process on the Risk Significant

Radioactive Material (RSRM) guidance checklist. The inspector will send a memo, usually with photos, to the license reviewer indicating if the applicant is ready to receive the license. During the review, the Bureau adjusted its process to include use of the RSRM checklist for all new licensees. To ensure that all new licenses issued during this review period were properly evaluated, the Bureau retroactively completed RSRM checklists based on the information they acquired. All met the requirements. As mentioned in Section 3.1, the pre-licensing documentation issue is likely the result of staff and management vacancies leading to less oversight of the licensing process.

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

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that New Mexico'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 actions, are a significant indicator of the overall quality of the incident response and allegation programs.

a. Scope

The team used the guidance in State Agreements procedure SA-105, "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation Activities," and evaluated New Mexico'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, New Mexico reported 16 incidents to the NRC. The team evaluated all of the incidents which included 7 medical events, 4 lost/stolen radioactive materials incidents, 3 damaged equipment incidents, and 2 potential overexposures. The Bureau dispatched inspectors for onsite follow-up when appropriate.

During the review period, five allegations were received by New Mexico. The team evaluated all of the allegations, including one allegation that the NRC referred to the State, during the review period.

c. Evaluation

The team determined that the Bureau appropriately responded to incidents and allegations involving radioactive materials during the review period. Documentation for the Bureau's efforts, however, was not readily available at the time of the review. Bureau staff were able to produce emails and documents to show that appropriate responses were performed. As mentioned in Section 3.1, the documentation issue is likely the result of staff and management vacancies leading to less oversight of the incident and allegation process.

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

d. Results

Based on the IMPEP evaluation criteria in MD 5.6, the team recommends that New Mexico'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 Disposal (LLRW) Program, and (4) Uranium Recovery (UR) Program. The NRC's Agreement with New Mexico does not relinquish regulatory authority for a sealed source and device evaluation, or uranium recovery program; therefore, only the first and third non-common performance indicators 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. 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 NRC designation.

a. Scope

The team used the guidance in State Agreements procedure SA-107, "Reviewing the Non-Common Performance Indicator: Compatibility Requirements," and evaluated New Mexico's performance with respect to the following performance indicator objectives. A complete list of regulation amendments may be found on the NRC Web site at the following address: <https://scp.nrc.gov/regtoolbox.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

New Mexico became an Agreement State on May 1, 1974. The statutory authority for the New Mexico program is contained in the Radiation Protection Act, Title 20 Environmental Protection, Chapter 3, "Radiation Protection." The Department is designated as the State's radiation control agency. The team noted that no new legislation affecting the radiation control program was passed during the review period.

The State's administrative rulemaking process normally takes approximately 12 months from drafting to finalizing a rule. After preparing draft regulations, the Bureau obtains approval to proceed through the regulation development process from the Radiation Technical Advisory Council (RTAC). The RTAC is a board comprised of six individuals acting as consultants, appointed by the Governor, who must approve all rule changes before the process for rule promulgation can proceed. Once approved, the public, NRC, other agencies, and all potentially affected licensees and registrants are then offered an opportunity to comment during the rulemaking process. Comments are considered and incorporated, as appropriate, before the regulations are finalized, approved, and filed. Once approved and finalized, rules are sent to the Environmental Improvement Board

which is the rule promulgating authority for the Bureau and all other Department programs. New Mexico's rules and regulations are not subject to sunset laws. The Bureau also has the authority to issue alternate legally binding requirements, such as license conditions, in lieu of regulations.

From 2010 to April 2016, the RTAC did not have sufficient members to achieve a quorum so that the regulation process was stalled. When the RTAC was finally fully appointed and able to approve regulation development, the Bureau quickly pushed the latest eight amendments through the process. To expedite the process and to take advantage of the quorum, the Bureau did not follow the established process by sending draft rules to NRC for an initial review, instead they went immediately to full adoption and then sent the amendments to NRC as final regulations for a review. That regulation review process was ongoing at the time of the IMPEP review. On July 6, 2017, the Bureau informed the team that four of the six RTAC member's terms have now expired, and they no longer have a quorum, therefore the Bureau does not have the ability to promulgate new regulation development at this time.

On June 16, 2017, the Bureau submitted the eight final regulation amendments listed below to the NRC for a compatibility review. Six of eight amendments were overdue for State adoption at the time of submission. The late amendments were:

- "Decommissioning Planning," 10 CFR Parts 20, 30, 40 and 70 amendment (76 FR 35512), that was due for Agreement State adoption by December 17, 2015. (RATS 2011-1)
- "Change of Compatibility," 10 CFR Part 31 amendment (77 FR 3640), that was due for Agreement State adoption by January 25, 2015. (RATS 2012-1)
- "Advance Notice 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. (RATS 2012-2)
- "Technical Corrections," 10 CFR Parts 30, 34, 40 and 71 amendment (77 FR 39899), that was due for Agreement State adoption by August 6, 2015. (RATS 2012-3)
- "Requirements for Distribution of Byproduct Material," 10 CFR Parts 30, 31, 32, 40 and 70 amendment (77 FR 43666), that was due for Agreement State adoption by October 23, 2015. (RATS 2012-4)
- "Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions," 10 CFR Parts 30, 40 and 70 amendment (78 FR 32310), that was due for Agreement State adoption by August 27, 2016. (RATS 2013-2)

c. Evaluation

The team evaluated the significance of the six amendments submitted late and determined that all but one were considered significant amendments. The failure to adopt significant regulatory amendments in a timely manner can create regulatory gaps

in the National Materials Program that could jeopardize an orderly pattern in the regulation of radioactive materials under the Atomic Energy Act, as amended.

Overall, the delays in the State's regulation development process prevented the timely adoption of approximately 75 percent of all amendments required to be adopted over the review period.

d. Results

The team evaluated the criteria identified in Management Directive 5.6 for this indicator and considered the differences noted between a finding of satisfactory, but needs improvement and a finding of unsatisfactory for this indicator. The team reviewed the issues facing the Bureau as they relate to the RTAC and the Bureau's continued attempts to keep regulation development on track. Division management was confident that the impediments to promulgation of regulations were resolved and that future regulation amendments could be adopted within the three-year compatibility timeline. The managers acknowledged that RTAC staffing is an obstacle that they must manage. The review team considered a finding of unsatisfactory, but concluded that with the State fully compatible at the time of the review, that a finding of satisfactory, but needs improvement was appropriate.

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

4.2 Low-level Radioactive Waste Disposal Program

In 1981, the NRC amended its Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" to allow a State to seek an amendment for the regulation of LLRW as a separate category. Although the New Mexico Agreement State Program has LLRW disposal authority, NRC has not required States to have a program for licensing a LLRW disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, they are expected to put in place a regulatory program which will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in New Mexico. Accordingly, the team did not review this indicator.

5.0 SUMMARY

As noted in Sections 3.0 and 4.0 above, New Mexico's performance was found to be satisfactory for five of six performance indicators reviewed and satisfactory, but needs improvement, for the indicator Compatibility Requirements. The team did not make any new recommendations regarding program performance by the State and determined that the recommendation from the 2013 IMPEP review should be kept open.

Accordingly, the team recommends that the New Mexico 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 team recommends that the next full IMPEP review take place in approximately 4 years.

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

The team recommends that Bureau management continue to aggressively pursue the filling of the current vacancies in order to ensure the program's continued adequacy and compatibility. (from 2013 IMPEP review)

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 Quality of Incident & Allegation Activities Inspector Accompaniments
Randy Erickson, Region IV	Technical Staffing and Training Compatibility Requirements
Sherrie Flaherty, Minnesota	Status of Materials Inspection Program Technical Quality of Licensing Actions
Mark Andrews, Tennessee	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.: GI316-13
License Type: Panoramic Irradiator	Priority: 2
Inspection Date: 4/3/17	Inspector: MO

Accompaniment No.: 2	License No.: MI210-114
License Type: Medical HDR	Priority: 2
Inspection Date: 4/6/17	Inspector: VD

Accompaniment No.: 3	License No.: IR022-29
License Type: Industrial Radiography	Priority: 1
Inspection Date: 5/24/17	Inspector: JH