



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

September 5, 2019

Nathaniel Smith, M.D., M.P.H.
Director of Health and State
Public Health Officer
Arkansas Department of Health
4815 W. Markham Street
Little Rock, AR 72205

Dear Dr. Smith:

On August 8, 2019, the Management Review Board (MRB), which consisted of U.S. Nuclear Regulatory Commission (NRC) senior managers and an Organization of Agreement States Liaison to the MRB, met to consider the results of the Follow-up Integrated Materials Performance Evaluation Program (IMPEP) review of the Arkansas Agreement State Program. The MRB found the Arkansas program adequate to protect public health and safety, and compatible with the NRC program.

The enclosed final report documents the IMPEP team's findings and recommendation and summarizes the results of the MRB meeting (Section 5.0). We request your evaluation and response to the recommendations in the report within 30 days from receipt of this letter. Based on the results of the current IMPEP review, the next full review of the Arkansas Agreement State Program will take place in approximately 2 years, with a periodic meeting in approximately 1 year.

I appreciate the courtesy and cooperation extended to the IMPEP team during the review. I also wish to acknowledge your continued support for the Agreement State program. I look forward to our agencies continuing to work cooperatively in the future.

Sincerely,

/RA/

K. Steven West
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, Compliance, Administration,
and Human Capital Programs
Office of the Executive Director for Operations

Enclosure:
Arkansas Final IMPEP Report

cc: Stephen James, Supervisor
Radiation Materials Program
Ohio Department of Health
Organization of Agreement States
Liaison to the MRB

SUBJECT: ARKANSAS FY2019 FINAL FOLLOW-UP INTEGRATED MATERIALS
 PERFORMANCE EVALUATION PROGRAM DATED: SEPTEMBER 5, 2019

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*** signed by email**

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
FOLLOW-UP REVIEW OF THE ARKANSAS AGREEMENT STATE PROGRAM

May 21 – May 23, 2019

FINAL REPORT

Enclosure 1

EXECUTIVE SUMMARY

The results of the Integrated Materials Performance Evaluation Program (IMPEP) follow-up review of the Arkansas Agreement State Program (Arkansas) are presented in this report. The review was conducted during the between May 21–May 23, 2019, and focused on the performance indicator, Technical Quality of Licensing Actions.

Based on the results of this review, the team recommended, and the Management Review Board (MRB) agreed, that Arkansas's performance was found satisfactory, but needs improvement for the indicator, Technical Quality of Licensing Actions.

The team recommended, and the MRB agreed, that three of the four recommendations from the 2017 IMPEP be closed (see Section 2.0) and recommended that a modified version of the fourth recommendation remain (see Section 4.0). The team did not make any new recommendations as a result of this follow-up review.

A Periodic Meeting was held concurrently to discuss the status of other performance indicators not evaluated as part of the follow-up IMPEP review (see Appendix B).

Accordingly, the team recommended, and the MRB agreed, that Arkansas' program is adequate to protect public health and safety, and compatible with the NRC's program. Due to the progress that Arkansas has made in improving its licensing program, the team recommended, and the MRB agreed, that the period of monitoring be discontinued. In addition, the team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 2 years from this review with a periodic meeting in approximately 1 year to assess Arkansas's continued progress.

1.0 INTRODUCTION

This Arkansas Agreement State Program (Arkansas) follow-up Integrated Materials Performance Evaluation Program (IMPEP) review was conducted during the period of May 21-23, 2019, by a team comprised of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Texas. Team members are identified in Appendix A. The team examined the progress made by Arkansas to address the performance issues that were identified during the 2017 IMPEP review regarding the indicator, Technical Quality of Licensing Actions. The follow-up review was conducted in accordance with the "Agreement State Program Policy Statement," published in the *Federal Register* on October 18, 2017, and NRC Management Directive 5.6 (MD 5.6), dated February 26, 2004, "Integrated Materials Performance Evaluation Program (IMPEP)." Preliminary results of the follow-up review, which covered the period of December 2, 2017, to May 23, 2019, were discussed with Arkansas managers on the last day of the review.

In preparation for the follow-up review, a questionnaire addressing the common performance indicator, Technical Quality of Licensing Actions, was sent to Arkansas on November 13, 2018. Arkansas provided its response to the questionnaire on May 13, 2019. A copy of the questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML19135A442.

A draft of this report was issued to Arkansas on June 17, 2019, for factual comment (ADAMS Accession Number ML19165A060). Arkansas responded to the draft report by letter dated July 12, 2019, from Stephanie Williams, Deputy Director, Public Health Programs, Arkansas Department of Health, (ADAMS Accession Number ML19202A003). The Management Review Board (MRB) convened on August 8, 2019, to discuss the team's findings.

Arkansas is administered by the Radioactive Materials Program (the Program). The Program is one of three organizations within the Radiation Control Section, which is part of the Health Systems Licensing and Regulation Branch. The Health Systems Licensing and Regulation Branch is part of the Center for Health Protection, which is within the Arkansas Department of Health (the Department). The director of the Department is the State Health Officer, who reports to the governor. Organization charts for Arkansas are available in ADAMS (ADAMS Accession Number ML17355A167).

At the time of the review, Arkansas regulated 176 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 Arkansas.

The team evaluated the information gathered against the established criteria for the performance indicator, Technical Quality of Licensing Actions, and made a preliminary assessment of the Arkansas Agreement State Program's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on December 1, 2017. The final report is available in ADAMS (ADAMS Accession Number ML18054A662). The results of the review and the status of the recommendations are as follows:

Technical Staffing and Training: Satisfactory
Recommendation: None

Status of Materials Inspection Program: Satisfactory
Recommendation: None

Technical Quality of Inspections: Satisfactory
Recommendation: None

Technical Quality of Licensing Actions: Unsatisfactory

Recommendation 1: Arkansas should provide additional training regarding the implementation of the Pre-licensing guidance to ensure that staff understand how to properly identify unknown applicants and transfer of control requests, when completing the evaluation of the basis for confidence.

Status: Arkansas provided additional training on its procedure, Guidance for Completion of Security Risk Checklists for Arkansas Radioactive Materials Licenses. This procedure includes both the Pre-licensing Guidance checklist and the Risk Significant Radioactive Materials checklist. The team evaluated casefiles for new licenses and change of control amendments and determined that Arkansas staff was appropriately completing the current Pre-licensing Guidance Checklist issued August 2018.

This recommendation is closed.

Recommendation 2: Arkansas should revise its procedures to ensure that the qualifications of preceptors are properly verified to attest to the training for new authorized users, authorized medical physicists, and radiation safety officers that are to be added to the licenses.

Status: Arkansas revised its procedures and provided training regarding its procedure for Medical Preceptor Verifications. The team evaluated casefiles for amendments that added authorized medical users and found that Arkansas staff verified the preceptors' qualifications for new authorized medical users, medical physicists, or radiation safety officers that were added to the license for these actions.

This recommendation is closed.

Recommendation 3: Arkansas should verify that all previously approved authorized users, authorized medical physicists, and radiation safety officers, where the preceptor is not listed on an Arkansas license, were properly qualified to act as a preceptor.

Status: Arkansas reported that they reviewed all 85 medical licenses and found that 15 out of the 200 amendments with preceptor statements had issues related to the verification of the preceptor. Arkansas stated that they re-reviewed these 15 actions and the preceptors were able to be verified. The team reviewed a sampling of these actions and determined that Arkansas verified the preceptors accordingly.

This recommendation is closed.

Recommendation 4: Arkansas should establish a quality control/quality assurance process or similar tool to help improve the thoroughness, completeness, and consistency of the license reviews, as well as to ensure license reviews are of acceptable technical quality with health, safety, and security properly addressed, and that licensing requests are properly signed before taking any action on a proposed request. (Section 3.4).

Status: In response to this recommendation, Arkansas implemented a multi-step Quality Improvement Procedure to address the previous issues identified during the 2017 IMPEP review. However, the team identified similar issues with thoroughness and consistency of the license reviews; see Section 3.1 of this report for details.

The team determined, and the MRB agreed, this recommendation should be kept open but modified (Section 3.1 of this report).

Technical Quality of Incident and Allegation Activities: Satisfactory

Recommendation: None

Compatibility Requirements: Satisfactory

Recommendation: None

Overall finding: Adequate to protect public health and safety, but needs improvement, and compatible with the NRC's Program. Arkansas was placed on monitoring.

3.0 COMMON PERFORMANCE INDICATOR

As mentioned in this report, this is a follow-up review which focused on the indicator, Technical Quality of Licensing Actions.

3.1 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 Arkansas licensing staff and regulated community is 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 Arkansas'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 follow-up review period, Arkansas performed 289 radioactive materials licensing actions. The team evaluated 25 radioactive materials licensing actions. The licensing actions selected for review included 2 new applications, 16 amendments, 2 renewals, 2 terminations, and 3 transfers of control notifications. The team evaluated casework which included the following license types and actions: medical diagnostic and therapy, accelerator, commercial manufacturing and distribution, industrial radiography, gauging devices, well logging, and financial assurance. The casework sample represented work from four license reviewers.

In response to the issues identified during the 2017 review, Arkansas implemented a quarterly "Quality Improvement" audit procedure. The team reviewed the audit results. Although the audits results were identifying errors in Arkansas's licensing actions (which were subsequently corrected by Arkansas), the team found that there were still cases in which other issues were identified with respect to the use of license conditions, and standard authorizations.

The team found that many of the licensing actions reviewed were thorough, complete, consistent, and of acceptable quality with health, safety, and security issues properly addressed, with the exception of the issues noted below. These issues included licenses in which standard license conditions, authorized materials and use conditions, and medical user materials authorizations were not in accordance with Arkansas's licensing procedures specified in RAM-01.1. Specifically, certain license conditions were old or obsolete (e.g., redundant to existing regulations or used inconsistently). Additionally, authorized medical users' material authorizations were written inconsistently among licenses, and not in accordance with Arkansas's licensing procedure; and an authorized material and use condition did not reflect the actual use of the material. The team did not identify any licensing action related issues, including license conditions, that were of health and safety, or security significance.

The team examined Arkansas's licensing practices regarding requests for Risk Significant Radioactive Material (RSRM). The team determined that Arkansas has a licensing procedure to identify new and amended licenses that should be subject to additional security measures and that Arkansas is appropriately implementing the procedure. However, the team found instances where Arkansas was not completing the checklist in cases where the request was to remove or decrease RSRM. Arkansas reported it was not aware of this requirement (included in Step 1 of the RSRM checklist) but committed to complete the checklist for these cases as well.

The team determined that the appropriate Pre-licensing Guidance checklist was being appropriately implemented in all applicable cases reviewed, including new license actions and change of control amendments. The team also determined that, as of February 2019, Arkansas is implementing a compatible procedure to the Pre-licensing Guidance that was issued by the NRC in August 2018.

Based on the findings mentioned above, the team recommends that Arkansas continue to update its quarterly Quality Improvement audits to ensure that licensing actions are thorough, consistent, and adhere to Arkansas's licensing procedures pertaining to the use of standard license conditions, standard authorized use conditions, standard authorized medical user materials authorizations; and to ensure that staff is implementing the RSRM checklist in cases where the request is to remove or decrease RSRM.

c. Evaluation

The team determined that, except as noted below, during the review period, Arkansas met the performance indicator objectives listed in Section 3.1.1.

- Licensing action reviews were not thorough, complete, consistent.

The team found that Arkansas's license action reviews did not identify certain license conditions that were old and obsolete and were redundant to existing regulations or used inconsistently. For example, several licenses contained conditions that were redundant to its regulations and no longer necessary. Arkansas's licensing procedure states that

during each amendment, the license reviewer should review the license conditions to determine that they are still current and applicable. The team found that authorized medical users', material authorizations for the use of materials for cardiology procedures, and the use of materials requiring a written directive were written inconsistently among licenses, and not in accordance with Arkansas's licensing procedure. The team also identified one license in which an authorized material and use condition did not reflect the actual use of the material, i.e., the licensee possessed depleted uranium but the authorization for depleted uranium was missing, and the licensee was storing material at the licensed site although storage was not specifically authorized on the license. However, the team did not identify any licensing action related issues including license conditions that were of health and safety, or security significance.

Based on the IMPEP evaluation criteria in MD 5.6, the team recommended that Arkansas's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory, but needs improvement.

d. MRB Decision

The MRB agreed with the team's recommendation and found Arkansas's performance with respect to this indicator to be satisfactory, but needs improvement.

4.0 SUMMARY

Arkansas's performance was found to be satisfactory, but needs improvement for the performance indicator, Technical Quality of Licensing Actions. The team recommended, and the MRB agreed, to close three of the four recommendations, and to keep open and modify one recommendation (Recommendation 4) regarding Arkansas's performance.

Accordingly, the team recommended, and the MRB agreed, that the Arkansas Agreement State Program be found adequate to protect public health and safety, and compatible with the NRC's program. Due to the progress that Arkansas has made in improving its licensing program, the team recommended, and the MRB agreed, that the period of monitoring be discontinued. In addition, the team recommended, and the MRB agreed, that the next full IMPEP review take place in approximately 2 years from this review with a periodic meeting in approximately 1 year to assess Arkansas's continued progress.

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

The team recommends that Arkansas continue to perform and update its quarterly Quality Improvement audits to ensure that licensing actions are thorough, consistent, and adhere to Arkansas's licensing procedures for the use of standard license conditions, standard authorized use conditions, standard authorized medical user materials authorizations; and to ensure that staff is appropriately implementing the RSRM checklist, especially in cases where the request is to remove or decrease RSRM.

LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	Periodic Meeting Summary

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Name	Area of Responsibility
Michelle Beardsley, NMSS	Team Leader Technical Quality of Licensing Actions
Randy Erickson, Region IV	Periodic Meeting
Vanessa Danese, Texas	Technical Quality of Licensing Actions

APPENDIX B

PERIODIC MEETING SUMMARY



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF ARKANSAS

TYPE OF OVERSIGHT: MONITORING

May 21, 2019

PERIODIC MEETING PARTICIPANTS

NRC

- Randy Erickson: State Agreements Officer, NRC Region IV

State of Arkansas

- Bernie Bevill: Section Manager
- Jared Thompson: Program Manager
- Steve Mack: Health Physicist
- Angie Morgan Hill: Health Physicist
- David Stephens, Health Physicist
- Christopher Talley, Health Physicist

1.0 INTRODUCTION

The results of the periodic meeting held between the U.S. Nuclear Regulatory Commission (NRC) and the State of Arkansas are contained in this report. The meeting was held on May 21, 2019. The meeting was conducted in accordance with the Office of Nuclear Material Safety and Safeguards Procedure SA-116 "Periodic Meetings between Integrated Materials Performance Evaluation Program (IMPEP) Reviews," dated June 3, 2009; and, was conducted concurrently with the 2019 follow-up IMPEP review.

The Arkansas Agreement State Program (Arkansas) is administered by the Radioactive Materials Program (the Program). The Program is one of three organizations within the Radiation Control Section, which is part of the Health Systems Licensing and Regulation Branch. The Health Systems Licensing and Regulation Branch is part of the Center for Health Protection, which is within the Arkansas Department of Health (the Department). The director of the Department is the State Health Officer, who reports to the governor.

At the time of the meeting, the Arkansas Agreement State Program regulated approximately 176 specific licenses authorizing possession and use of radioactive materials. The meeting 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 Arkansas.

The Arkansas Agreement State Program has been subject to increased oversight by the NRC since February 2018. During a Management Review Board (MRB) held on February 13, 2018, to discuss the results of the December 2017 IMPEP review, the MRB determined that the Arkansas Agreement State Program should be placed on Monitoring and overall found adequate to protect public health and safety but needs improvement, and compatible with the NRC's Program.

The timeframe for the next IMPEP review was shortened to 18 months and was held the week of May 20, 2019.

2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC Regional Office and Agreement State radioactive materials programs during an IMPEP review. 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.

Because the periodic meeting was held concurrently with the follow-up IMPEP review, and licensing was the focus of that review, the periodic meeting was limited to a discussion of the indicators excluding the licensing indicator.

2.1 Technical Staffing and Training
(2017 IMPEP: Satisfactory)

Arkansas is made up of six full-time equivalents which includes the Program Manager, four health physicists, and one administrative staff member. The health physicists are responsible for all licensing and inspection activities within the program. At the time of the 2017 IMPEP review, Arkansas had one vacancy which was filled shortly after the review. Since the 2017 IMPEP review, no staff have left Arkansas. Three of the health physicists are fully qualified and one is currently in training.

Arkansas has a documented training and qualification plan consistent with NRC's Inspection Manual Chapter (IMC) 1248, "Qualification Programs for Federal and State Materials and Environmental Management Programs." Program management tracks continuing education requirements of 24 hours every 2 years and provides ample opportunities for staff to fulfill this requirement.

2.2 Status of the Materials Inspection Program
(2017 IMPEP: Satisfactory)

Arkansas's inspection frequencies are the same as the NRC's inspection frequencies that are listed in IMC 2800. At the time of the meeting, no inspections were currently overdue, and none had been performed overdue during the review period. Arkansas issued four new licenses during the review period and all initial inspections of those licenses were performed within the 12-month requirement.

Arkansas reported they have been meeting the 20 percent requirement for performing reciprocity inspections this review period. Arkansas continues to perform annual supervisor accompaniments of each inspector with none being missed since the previous review. Additionally, inspection reports are typically issued within 30 days of the inspection exit meeting with the licensee.

2.3 Technical Quality of Inspections
(2017 IMPEP: Satisfactory)

Inspection guidance used by Arkansas is equivalent to the NRC's IMCs and Inspection Procedures. Arkansas issues all inspection findings, regardless of whether there is a violation, by written correspondence from the office. Inspection findings are routinely sent to the licensee within 30 days of the completion of an inspection.

2.4 Technical Quality of Licensing Actions
(2017 IMPEP: Unsatisfactory)

The licensing indicator and the four associated recommendations were reviewed during the IMPEP portion of the review.

2.5 Technical Quality of Incident and Allegation Activities (2017 IMPEP: Satisfactory)

Arkansas has procedures and processes in place to maintain effective responses to incidents and allegations. When an event is reported to Arkansas, the Program Manager evaluates the event to determine its health and safety significance and then decides on the appropriate response. That response can range anywhere from responding immediately to reviewing the event during the next inspection. When an event is determined to have high health and safety significance, inspectors are dispatched immediately.

Since the 2017 IMPEP review, a total of eight events had been reported to the Nuclear Materials Events Database by Arkansas. At the time of the periodic meeting all but one had been reviewed and closed. No allegations had been received from NRC or directly by Arkansas during this time; however, when allegations are received they are reviewed by Arkansas, concerned individuals are notified of the actions taken, and allegeders' identities are protected whenever possible in accordance with state law.

3.0 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 Arkansas retains regulatory authority for SS&D and UR; therefore, only the first and third non-common performance indicator applied to this meeting.

3.1 Compatibility Requirements (2017 IMPEP: Satisfactory)

At the time of the periodic meeting there were no regulation amendments overdue for adoption, nor were any submitted late. One legislative change affecting the Radioactive Materials Program has occurred since the last IMPEP review. Arkansas's requirements will change from "Rules and Regulations" to "Rules". This will require the Radioactive Materials Program to amend all of its regulations, licenses/license conditions, etc. to remove references to the word, "regulation." Regulations applicable to Arkansas are not subject to sunset requirements.

3.2 Low-Level Radioactive Waste Disposal Program (2017 IMPEP: Not reviewed)

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 Arkansas has authority to regulate a LLRW disposal facility, the NRC has not required States to have a program for licensing a 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, it is expected to put in place a regulatory program that will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a commercial LLRW disposal facility in Arkansas. Accordingly, this indicator was not reviewed.

4.0 SUMMARY

Within the scope of the periodic meeting, no programmatic concerns were noted at this time. Arkansas is an effective and vital part of the Arkansas Department of Health. Arkansas continues to effectively manage its inspection activities and is responding to incidents and allegations as appropriate.