



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

June 26, 2020

Nathaniel Smith, MD, MPH
Arkansas Secretary of Health
Arkansas Department of Health
4815 W. Markham Street
Little Rock, Arkansas 72205

Dear Dr. Smith:

A periodic meeting with Arkansas was conducted telephonically on May 21, 2020. The purpose of this meeting was to review and discuss the implementation of Arkansas' Agreement State Program. The Nuclear Regulatory Commission (NRC) was represented by Mary Muessle, Director, Division of Nuclear Materials Safety, and Randy Erickson, Regional State Agreements Officer, from the NRC's Region IV office. Also attending were Patricia Silva, Chief, Materials Inspection Branch, and Jackie Cook, Regional State Agreements Officer, also from the NRC Region IV office.

I have completed and enclosed a general meeting summary. If you feel that our comments, conclusions, or actions to be taken do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 200-1143 or via email at Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy Erickson
Regional State Agreements Officer

Enclosure:
Periodic Meeting Summary for Arkansas

cc:
Stephanie Williams, RNP, MPH
Chief of Staff
Arkansas Department of Health
4815 W. Markham Street
Little Rock, Arkansas 72205

DISTRIBUTION:

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM

PERIODIC MEETING WITH THE STATE OF ARKANSAS

TYPE OF OVERSIGHT: NONE

May 21, 2020

Enclosure

PERIODIC MEETING PARTICIPANTS

NRC

- Mary Muessle: Director, Division of Nuclear Materials Safety, NRC Region IV
- Patricia Silva: Chief, Materials Inspection Branch, NRC Region IV
- Randy Erickson: RSAO, NRC Region IV
- Jackie Cook, RSAO, NRC Region IV

State of Arkansas

- Nell Smith: Chief, Health Systems Licensing and Certification Branch
- Bernard Bevill: Chief, Radiation Control Section
- Jared Thompson: Manager, Radiation Control Program
- Steve Mack: Health Physicist
- Angela Minden: Health Physicist
- Angie Morgan Hill: Health Physicist
- Christopher Talley: Health Physicist

1.0 INTRODUCTION

This report presents the results of the periodic meeting held between the U.S. Nuclear Regulatory Commission (NRC) and the State of Arkansas. The meeting was held on May 21, 2020 and was conducted in accordance with Nuclear Materials Safety and Safeguards (NMSS) Procedure SA-116, "Periodic Meetings between IMPEP Reviews," dated June 3, 2009.

The Arkansas Agreement State Program is administered by the Radioactive Materials Program (the Program). The Program is one of three organizations within the Radiation Control Section, which is a 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 Secretary of Health leads the agency and reports to the Governor.

At the time of the meeting, the Arkansas Agreement State Program regulated 181 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 Program is fee funded. Fees are collected and go into general revenue with a yearly appropriation made for the Program. The last fee increase was in 2012. The previous fee increase was in 1995. The Department can reallocate funds when it determines it's necessary, and most recently they reallocated funds from all state agencies to assist in covering Coronavirus (COVID-19) pandemic related costs. In addition, both the Governor and legislature can reallocate funds as they determine appropriate following established legal processes.

The Program last underwent a follow-up Integrated Materials Performance Evaluation Program (IMPEP) review from May 21-23, 2019. That report is in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession ML19227A309. A Management Review Board (MRB) meeting to discuss the outcome of the IMPEP review was held on August 8, 2019.

During the August 8, 2019 MRB meeting, Arkansas's performance was found to be satisfactory, but needs improvement for the performance indicator, Technical Quality of Licensing Actions and satisfactory for all other indicators reviewed. The team recommended, and the MRB agreed, to close three of the four recommendations, and to keep open and modify one recommendation 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 had made in improving its licensing program, the team also 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 the date of the 2019 IMPEP review and that a periodic meeting be held in approximately 1 year from the date of the 2019 IMPEP review to further assess Arkansas' continued progress.

2.0 COMMON PERFORMANCE INDICATORS

Five common performance indicators are used to review the NRC's 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.

2.1 Technical Staffing and Training (2019 IMPEP Rating: Satisfactory)

The Program when fully staffed is comprised of six full time equivalents which includes one supervisor, one administrative assistant, and four technical staff members who perform licensing actions, inspections; and, event and allegation investigations. Since the 2019 IMPEP review, one person retired in August 2019 and was replaced in October 2019. That newest staff member then resigned in May 2020, leaving the agency for a federal position. At the time of the meeting, the materials program had one vacancy which likely won't be filled until their next fiscal year which begins on July 1, 2020.

The Program has a training and qualification plan program that is 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 (2019 IMPEP Rating: Satisfactory)

The Program's inspection frequencies are the same as the NRC's inspection frequencies identified in IMC 2800. At the time of the meeting, one inspection was currently overdue, and two other inspections had been performed overdue since the 2019 IMPEP review. The overdue inspections occurred prior to the implementation of travel restrictions due to the Coronavirus (COVID-19) pandemic.

The Program reported that on March 19, 2020, the Department implemented travel restrictions due to the COVID-19 pandemic; and, as of the date of the periodic meeting travel restrictions were still in place. Between the implementation of travel restrictions and the date of the periodic meeting, the Program performed two telephonic inspections of out-of-state industrial radiography licensees holding Arkansas' licenses. The Program also reported that the easing of travel restrictions is currently being discussed and while no specific date for easing the restrictions has yet been identified, at some point the Program will once again begin performing onsite inspections. They will begin with inspections of industrial licensees and will eventually transition into performing inspections of medical licensees.

The Program also reported that in 2019, they performed reciprocity inspections on 3 out of 7 candidate licensees (43 percent) coming into Arkansas under reciprocity. In 2020, they will once again begin to perform reciprocity inspections on candidate licensees working in Arkansas as travel restrictions are eased. The Program reported that while they may not be required to meet the 20 percent reciprocity inspection goal in the future, they will attempt to perform as many reciprocity inspections as possible because they believe those

inspections are important to health and safety in Arkansas. Furthermore, under the Legislation, Regulations and Other Program Elements indicator, the Program is modifying their inspection procedures to account for changes in reciprocity inspection requirements due to recent revisions to IMC 2800.

2.3 Technical Quality of Inspections
(2019 IMPEP Rating: Satisfactory)

Inspection guidance used by Arkansas is equivalent to the NRC's Inspection Procedures. Arkansas issues all inspection findings, regardless of whether there is a violation, by written correspondence from the office. All inspection documentation is developed by the inspector, then reviewed and signed out by the Program Manager. Inspection findings are routinely sent to the licensee within 30 days of the completion of an inspection.

Inspector accompaniments continue to be performed for everyone performing inspections on an annual basis. Newer inspectors typically receive more than one inspector accompaniment each year.

2.4 Technical Quality of Licensing Actions
(2019 IMPEP Rating: Satisfactory but needs Improvement)

The Program had approximately 181 specific licensees at the time of the periodic meeting. The inspection staff also performs all licensing actions which after completion are signed out by the Program Manager. All renewals and new licenses are now peer reviewed prior to being sent out under the Program Manager's signature. Since the 2019 IMPEP review, the Program completed 189 licensing actions, which includes 153 license amendments, 21 license renewals, 10 new license applications, and 5 license terminations.

The Program also reported that licensing guidance used by the materials section is equivalent to the NRC's NUREG-1556 Series guidance, pre-licensing guidance, and the Risk Significant Radioactive Materials (RSRM) checklist.

The Program requires registration of all generally licensed devices that meet the NRC criteria for registration as found in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 31, and they do not register other generally licensed devices that do not meet that criteria (e.g. tritium exit signs). When generally licensed devices are reported by registrants to be damaged, lost or stolen, and if they meet the thresholds for reporting to NRC's Headquarters' Operations Officer (HOO), they are reported to the HOO accordingly. Regardless of requirements for HOO reporting, all events involving generally licensed devices are reported to the Nuclear Materials Events Database (NMED).

During the 2019 IMPEP review the team found that in response to the issues identified during the 2017 review, Arkansas implemented a quarterly "Quality Improvement" audit procedure. After reviewing the audit results, the team noted that although the audits results were identifying errors in Arkansas's licensing actions, 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. These included licenses in which standard license conditions, authorized materials and use conditions, and medical user materials authorizations were not in accordance with Arkansas' licensing procedures specified in RAM-01.1. The team found that some 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. Because of these findings, the team left open a modified version of the 2017 recommendation. The new recommendation is as follows:

Recommendation: 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.

Status: In response to the recommendation the Program continued to perform monthly Quality Improvement audits and to conduct training with all staff based on these audit findings. The last audit was performed February 2020.

In addition, the Program conducted a full review of the standard license conditions utilized by the Program and a comparison to those used by NRC. The Program removed unnecessary and obsolete standard license conditions and will update licenses as they come due for renewal and when amendment requests are submitted.

Also, the Program initiated a Quality Assurance Improvement Process for renewals and new licenses. In the past, a secondary reviewer would peer review the primary reviewer's work typically for technical accuracy only. This emphasis on the technical review portion identified few technical errors. However, because the review didn't focus on the content of the licensing action, the noted errors could be missed. With the Program's renewed focus on the quality of the license document, the Program has been able to catch more errors with the license document and the proper use of standard license conditions.

2.5 Technical Quality of Incident and Allegation Activities
(2019 IMPEP Rating: 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.

When an event is received requiring reporting to the NRC's HOO, those events are identified and HOO reporting is performed within the required timeframe and in accordance guidance found in SA-300.

Arkansas Periodic Meeting Summary

Since the 2019 IMPEP review, no events occurred requiring reporting to the Nuclear Materials Events Database by Arkansas. 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 alleged 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 Legislation, Regulations and Other Program Elements (2019 IMPEP Rating: Satisfactory)

One legislative change affecting the Program has occurred since the last full IMPEP review and discussed during the May 2019 periodic meeting. Arkansas' requirements will change from "Rules and Regulations" to "Rules" (Act 315 – 2019). This will require the Program to amend all regulations, licenses/license conditions, forms, etc. to remove references to the word, "regulation."

At the time of the periodic meeting there were no regulation amendments overdue for adoption, nor were any submitted late since the 2019 IMPEP review. In 2021, Arkansas will begin development on Regulation Amendment Tracking Sheet (RATS) 2018-1 and 2018-2 due in late 2021 and early 2022 respectively.

During the periodic meeting discussions were held regarding guidance documents maintained and used by the Program, and how they use those guidance documents to meet the requirements of other program elements (e.g., Pre-Licensing Guidance, Inspection Procedures, Reciprocity Procedures, etc.) that the NRC has designated as necessary for the maintenance of an adequate and compatible program. These are living documents and changes should be made to them as necessary.

3.2 Low-Level Radioactive Waste Disposal Program (2019 IMPEP Rating: Not Rated)

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

The Program continues to be an effective and well managed Agreement State program. Currently there is one vacancy. The Program is effectively managing its licensing and inspections activities well, even in the face of the coronavirus COVID-19 public health emergency. The licensing issues identified during the 2017 IMPEP review and again during the 2019 follow-up IMPEP review have been addressed and continue to be corrected. The Program continues to perform monthly Quality Improvement audits and continues to train the staff based on the audit findings. They have improved their audit program to include additional sampling of actions and conducted a full review of the standard license conditions utilized by the Program with comparisons to those used by NRC. The Program continues to remove unnecessary and obsolete standard license conditions as licenses come due for renewal and when amendment requests are submitted. Also, the Program initiated a Quality Assurance Improvement Process for license renewals and all new licenses which expanded the peer review process from only looking at technical accuracy to also now include the overall quality of the licensing document. The Program responds to events as appropriate, and they currently have no overdue regulation amendments.

The NRC staff recommends that the next IMPEP review for the Arkansas Program be conducted as scheduled in FY2022. The Chief of the Health Systems Licensing and Certification Branch of the Arkansas Department of Health has requested a Special MRB to assist in improving quality within the Program.