



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

February 2, 2024

Diane Pelletier, Chief  
Center for Health Facilities Regulation  
Division of Healthcare Quality and Safety  
Rhode Island Department of Health  
3 Capitol Hill  
Providence, RI 02908-5097

SUBJECT: Rhode Island Final IMPEP Report

Dear Diane Pelletier:

On January 17, 2024, the Management Review Board (MRB), which consisted of the U.S. Nuclear Regulatory Commission (NRC) senior managers and an Organization of Agreement States member, met to consider the results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the Rhode Island Agreement State Program. The MRB Chair, in consultation with the MRB, found the Rhode Island Agreement State Program adequate to protect public health and safety and compatible with the NRC's program.

The enclosed final report documents the IMPEP team's findings and summarizes the results of the MRB meeting. Based on the results of the current IMPEP review, the MRB determined that a periodic meeting take place in approximately 18 months with a second periodic meeting in another 18 months, and the next IMPEP review take place in approximately 4 years.

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,

A handwritten signature in black ink, appearing to be "J. Lubinski".

Signed by Lubinski, John  
on 02/02/24

John W. Lubinski, Director  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. 2024 Rhode Island Final IMPEP Report
2. 2024 Rhode Island MRB Participation



INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM  
REVIEW OF THE RHODE ISLAND AGREEMENT STATE PROGRAM

OCTOBER 16-19, 2023

**FINAL REPORT**

## EXECUTIVE SUMMARY

The results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the Rhode Island Agreement State Program are discussed in this report. The review was conducted on October 16-19, 2023. Inspector accompaniments were conducted during the week of September 6, 2023.

The team recommended, and the Management Review Board (MRB) Chair agreed, that Rhode Island's performance be found satisfactory for all six performance indicators reviewed. The team proposed, and the MRB Chair agreed, that three of the four recommendations from the 2021 IMPEP review should be closed and the recommendation regarding licensing and inspection documentation be modified.

Based on the findings and the criteria in NRC Management Directive 5.6, Integrated Materials Performance Evaluation Program (IMPEP), the team recommended, and the MRB Chair agreed, that Rhode Island be removed from heightened oversight. The team considered whether Rhode Island should be moved to a period of monitoring or completely removed from enhanced oversight. Guidance in State Agreements procedure [SA-122](#), "Enhanced Oversight," allows monitoring to be considered for Programs being removed from heightened oversight. The team recommended, and the MRB Chair agreed, that Rhode Island's performance over this review period did not indicate a period of monitoring would be appropriate since; (1) the team recommended and the MRB approved all indicators be rated satisfactory, (2) program performance has improved over this review period, and (3) recommendations have been implemented. Therefore, based on Rhode Island's improved performance, the team recommend, and the MRB Chair agreed, that Rhode Island be removed from enhanced oversight.

Accordingly, the team recommended, and the MRB Chair agreed, that Rhode Island be found adequate to protect public health and safety and compatible with the NRC's program. The team also recommended, and the MRB Chair agreed, that a periodic meeting take place in approximately 18 months with a second periodic meeting in another 18 months, and the next IMPEP review take place in approximately 4 years.

## 1.0 INTRODUCTION

The Rhode Island Agreement State Program review was conducted from October 16-19, 2023, by a team of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Kentucky. Team members are identified in Appendix A. Inspector accompaniments were conducted during the week of September 6-8, 2023. The inspector accompaniments are identified in Appendix B. The review was conducted in accordance with the "Agreement State Program Policy Statement," published in the *Federal Register* on October 18, 2017 (82 FR 48535), and NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated July 24, 2019. Preliminary results of the review, which covered the period of October 23, 2021, to October 19, 2023, were discussed with Rhode Island managers on the last day of the review.

In preparation for the review, a questionnaire addressing the common performance indicators and applicable non-common performance indicators was sent to Rhode Island on June 23, 2023. Rhode Island provided its response to the questionnaire on September 25, 2023. A copy of the questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number [ML23272A021](#).

Rhode Island is administered by a Radiation Control Program, which is located within the Center for Health Facilities Regulation. The Center for Health Facilities Regulation is part of the Rhode Island Division of Healthcare Quality and Safety, in the Rhode Island Department of Health, under the Secretary for Health and Human Services. Organization charts for Rhode Island are available in ADAMS Accession Number [ML23272A020](#).

At the time of the review, Rhode Island regulated 37 specific licenses authorizing possession and use of radioactive materials. The review focused on the radiation control program as it is carried out under Section 274b. of the Atomic Energy Act of 1954, as amended.

The team evaluated the information gathered against the established criteria for each common and applicable non-common performance indicators and made a preliminary assessment of Rhode Island's performance.

## 2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The 2021 IMPEP review concluded on October 22, 2021. The final report is available in ADAMS Accession Number [ML22032A318](#). The results of the review and status of the associated recommendations are as follows:

Technical Staffing and Training: Satisfactory but Needs Improvement

Recommendation 1: Rhode Island management take measures to ensure licensing and inspection documentation is complete and stored in a centralized filing system.

Status: The team is proposing that this recommendation remain open. Details related to the work performed by Rhode Island to address this recommendation and the 2023 IMPEP team's evaluation of that effort can be found in Section 3.1 of this report.

Status of Materials Inspection Program: Satisfactory

Recommendation: None

Technical Quality of Inspections: Satisfactory

Recommendation: None

**Technical Quality of Licensing Actions: Unsatisfactory**

Recommendation 2: Implement the Pre-Licensing guidance (and any updates, as necessary) and provide training to ensure staff understands how to properly identify unknown applicants and transfer of control requests, and how to document the basis for the known entity determination.

Status: The 2023 IMPEP team is proposing that this recommendation be closed. Details related to the work performed by Rhode Island to address this recommendation and the 2023 IMPEP team's evaluation of that effort can be found in Section 3.4 of this report.

Recommendation 3: Implement the Risk Significant Radioactive Materials (RSRM) checklist (and any updates, as necessary) and provide additional training to ensure staff understand when to use the checklist.

Status: The 2023 IMPEP team is proposing that this recommendation be closed. Details related to the work performed by Rhode Island to address this recommendation and the 2023 IMPEP team's evaluation of that effort can be found in Section 3.4 of this report.

Recommendation 4: Implement a financial assurance program consistent with State regulations; that licenses that authorize possession of radioactive material in excess of quantities requiring financial assurance post financial assurance; and, that financial assurance license conditions be consistent with possession limits authorized on the license.

Status: The 2023 IMPEP team is proposing that this recommendation be closed. Details related to the work performed by Rhode Island to address this recommendation and the 2023 IMPEP team's evaluation of that effort can be found in Section 3.4 of this report.

**Technical Quality of Incident and Allegation Activities: Satisfactory**

Recommendation: None

**Legislation, Regulations, and Other Program Elements: Satisfactory**

Recommendation: None

Overall finding: Adequate to protect public health and safety but needs improvement and compatible with the NRC's program. Based on the results of the 2021 Rhode Island IMPEP review, the team recommended, and the Management Review Board (MRB) agreed, that NRC initiate a period of heightened oversight for Rhode Island. The 2021 IMPEP team further recommended, and the MRB agreed, that a periodic meeting be held within one year and that a IMPEP review take place approximately two years following the periodic meeting.

### **3.0 COMMON PERFORMANCE INDICATORS**

Five common performance indicators are used to review the NRC and Agreement State radiation control 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

assessed. Review of staffing also requires 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 (SA) procedure [SA-103](#), "Reviewing the Common Performance Indicator: Technical Staffing and Training," and evaluated Rhode Island's performance with respect to the following performance indicator objectives:

- A well-conceived and balanced staffing strategy has been implemented throughout the review period.
- 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.
- Agreement State training and qualification program is equivalent to NRC Inspection Manual Chapter (IMC) [IMC 1248](#), "Formal Qualifications Program for Federal and State Material and Environmental Management Programs."
- Qualification criteria for new technical staff are established and are followed, or qualification criteria will be established if new staff members are hired.
- 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

Rhode Island consists of four technical staff and one supervisor which equates to 2.8 full-time equivalents (FTE). Rhode Island has four qualified inspectors, only three were active during the review period, and three qualified license reviewers. There were no vacancies over this review period. At the time of the review, Rhode Island was in the process of hiring an additional staff member (newly created position) for the radiation control program. The team learned that this position would include approximately 0.2 to 0.4 FTE devoted to the program.

The team noted that Rhode Island has a training and qualification program consistent with NRC's IMC 1248. The team determined that qualified staff were completing at least 24 hours of refresher training every two years.

As identified in Section 2.0 of this report, one recommendation was made under this indicator related to program performance resulting from the 2021 IMPEP review.

Recommendation 1: Rhode Island management take measures to ensure licensing and inspection documentation is complete and stored in a centralized filing system.

When Rhode Island was placed on heightened oversight, they created a Program Improvement Plan (PIP). The PIP outlined corrective actions to address this matter. The team reviewed Rhode Island's corrective actions and observed Rhode Island's centralized filing system. The team found that Rhode Island implemented a new database for electronic inspection and licensing records. In addition, Rhode Island performed an audit of licensing files to ensure all files were complete. During the review, the team learned that the audit for inspection files was in process but not yet completed. The team noted that while all licensing records were migrated into the new system, not all the inspection documents had been

moved to the centralized filing system. Rhode Island did not provide the team with two inspection findings letters, one licensee response to a notice of violation, and one inspection report. The team learned that some inspection documents remained on inspector's computers or were in the old paper filing system. For this reason, the team proposes that this recommendation be modified to address the remaining inspection documents that need to be completed and stored in the new centralized filing system.

c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 3.1.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island's performance with respect to the indicator, Technical Staffing and Training, be found satisfactory. The team originally proposed that the previous recommendation remain open and unchanged. Discussions between the MRB and the team concluded that the previous recommendation remain open but be modified to address Rhode Island's completion of licensing files migration to the new centralized system as noted below. The team modified the recommendation as noted below.

Recommendation: Rhode Island audit licensee's inspection files to ensure inspection documentation is complete and inspection files are stored in a centralized filing system.

d. MRB Chair's Determination

The MRB Chair agreed with the team's modification of the recommendation and found Rhode Island's performance with respect to this indicator satisfactory.

### 3.2 Status of Materials Inspection Program

Inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety and security practices. The frequency of inspections is specified in [IMC 2800](#), "Materials Inspection Program," and is dependent on the amount and type of radioactive 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 [SA-101](#), "Reviewing the Common Performance Indicator: Status of the Materials Inspection Program," and evaluated Rhode Island'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 prescribed frequencies (<https://www.nrc.gov/materials/miau/mat-toolkits.html>).
- 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.
- Candidate licensees working under reciprocity are inspected in accordance with the criteria prescribed in IMC 2800 and other applicable guidance or compatible Agreement State Procedure.

- 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

Rhode Island performed 16 Priority 1, 2, 3, and initial inspections during the review period. No Priority 1, 2, 3 or initial inspections were conducted overdue during the review period. Rhode Island’s inspection frequencies are the same for similar license types in NRC’s program. A sampling of 16 inspection reports indicated that the inspection findings were communicated to the licensees within Rhode Island’s goal of 30 days after the inspection exit or 45 days after the team inspection exit.

Rhode Island identified eight reciprocity candidates for the review period and inspected all eight candidates. Rhode Island’s Inspection Manual of 2021 states all reciprocity applicants are eligible for inspection. Reciprocity inspections are selected in a risk-informed manner based upon allegation, enforcement, Nuclear Materials Event Database (NMED) incident history, and new or unique technology. Inspection priorities 1, 2, and 3 are inspected each calendar year as resource and inspection schedules permit. The team noted that all reciprocity inspections were conducted in a timely manner.

c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 3.2.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island’s performance with respect to the indicator, Status of Materials Inspection Program, be found satisfactory.

d. MRB Chair’s Determination

The MRB Chair agreed with the team’s recommendation and found Rhode Island’s performance with respect to this indicator satisfactory.

### 3.3 Technical Quality of Inspections

Inspections, both routine and reactive, provide reasonable 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 inspection program.

a. Scope

The team used the guidance in [SA-102](#), “Reviewing the Common Performance Indicator: Technical Quality of Inspections,” and evaluated Rhode Island’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 as appropriate, 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.
- Inspection guides are compatible with NRC guidance.
- An adequate supply of calibrated survey instruments is available to support the inspection program.

b. Discussion

The team evaluated 16 inspection reports and enforcement documentation, and interviewed inspectors involved in materials inspections conducted during the review period. The team reviewed casework for inspections conducted by all qualified Rhode Island inspectors and covered medical, industrial, commercial, academic, research, and service provider licenses. The team found that inspection findings were complete and well documented and management reviews were conducted promptly. The team also noted that inspectors verified that licensee's implemented corrective actions.

A team member accompanied three inspectors on September 6-8, 2023. The inspector accompaniments were conducted and are identified in Appendix B. The team noted that inspections were performance-based. Inspectors were well prepared, thorough in their evaluation of the licensee, and demonstrated knowledge of appropriate regulations. Inspectors observed the use of radioactive material when opportunities were available and assessed the impact of licensed activities on health, safety, and security. All findings and conclusions were well-founded and appropriately documented.

Rhode Island has procedures compatible with IMC 2800 which were under revision to include recent changes added in 2023 at the time of the review. During the MRB, Rhode Island stated the procedures have been revised to include these changes.

All annual supervisory accompaniments for active inspectors were performed and appropriately documented.

The team noted that Rhode Island has an appropriate supply of calibrated survey instruments to support the program.

c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 3.3.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island's performance with respect to the indicator, Technical Quality of Inspections be found satisfactory.

d. MRB Chair's Determination

The MRB Chair agreed with the team's recommendation and found Rhode Island's performance with respect to this indicator 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,

implementation of those procedures, and documentation of communications and associated actions between the Rhode Island 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 [SA-104](#), "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated Rhode Island'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., pre-licensing guidance, Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, financial assurance, etc.).
- 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 RSRM are appropriately implemented including the physical protection of Category 1 and Category 2 quantities of radioactive material (10 CFR Part 37 equivalent).
- Documents containing sensitive security information are properly marked, handled, controlled, and secured.

b. Discussion

During the review period, Rhode Island performed 56 radioactive materials licensing actions. The team evaluated 20 of those licensing actions. The licensing actions selected for review included 1 new application, 8 amendments, 2 renewals, 4 terminations, and 5 actions related to financial assurance. The team evaluated casework which included the following license types: broad scope academic, broad scope medical, self-shielded irradiator, industrial radiography, gamma knife, nuclear pharmacy, diagnostic and therapeutic nuclear medicine, portable gauge, and veterinary. The casework sample represented work from all staff qualified to independently perform license reviews.

Rhode Island requires licenses to be renewed every ten years. The team reviewed Rhode Island's use of the NRC's NUREG-1556 series licensing guidance, licensing checklists, standard license conditions, and a new electronic database which was operational during this review period. The team found that licensing actions completed during the review period were complete, thorough, and of adequate technical quality, with health, safety, and security issues properly addressed. The licensing cases reviewed demonstrated that proper guidance was followed. All necessary licensee commitments were obtained, and deficiency letters and license conditions were well supported by information contained in the licensing files. Renewal applications demonstrated a thorough analysis of the licensee's inspection and enforcement history. The team determined that appropriate financial assurance instruments were properly submitted when required. Additionally, licenses containing security related information were properly marked. Each completed action includes a peer review, and all final actions are signed by the Radiation Control Program Director.

Additionally, the team determined that the electronic database implemented by Rhode Island during the review period contained all necessary information for each licensing action and that each licensing file was complete.

The team determined that no licensing backlog existed at the time of the review, however, there was one renewal application that had been with the program for over a year. At the time of the review, this renewal was still in progress due to the licensee wishing to downgrade the license from a broad scope medical to a limited scope medical. Rhode Island has been consistently working on this action and was waiting for additional information from the licensee including, but not limited to, close-out surveys of previously used areas and submittal of operating procedures applicable to a limited scope nuclear medicine program. Rhode Island's stated at the MRB that this licensing action has been completed.

As identified in Section 2.0 of this report, three recommendations were made under this indicator related to program performance resulting from the 2021 IMPEP review.

Recommendation 2: Implement the Pre-Licensing guidance (and any updates, as necessary) and provide training to ensure staff understands how to properly identify unknown applicants and transfer of control requests, and how to document the basis for the known entity determination.

The team reviewed Rhode Island's corrective actions outlined in their PIP, as well as reviewed licensing actions for new license applicants and transfers of control completed during the review period. The team found that Rhode Island addressed this recommendation prior to the on-site review including training staff on the use of the Pre-Licensing guidance which was completed on March 23, 2022. While on-site, the team reviewed the one transfer of control action which resulted in a new license being issued and interviewed staff to gain a better understanding of their knowledge of the use of the Pre-Licensing guidance checklist. The team found that the Pre-Licensing guidance checklist was correctly implemented in the one applicable action received during the review period. Additionally, when interviewed, all qualified license reviewers demonstrated their knowledge of when to apply the guidance and how it was to be used. Therefore, the team proposed and the MRB Chair agreed this recommendation be closed.

Recommendation 3: Implement the RSRM checklist (and any updates, as necessary) and provide additional training to ensure staff understand when to use the checklist.

The team reviewed Rhode Island's corrective actions outlined in their PIP, as well as reviewed applicable licensing actions completed during the review period. The team found that Rhode Island trained their staff on the use of the RSRM checklist which was completed on March 23, 2022. While on-site, the team reviewed the one transfer of control action which resulted in a new license being issued, two renewals applications, and one amendment where possession limits were being increased; and interviewed staff to gain a better understanding of their knowledge of the use of the RSRM checklist. The team found that the RSRM checklist was correctly implemented in all applicable actions received during the review period. Additionally, when interviewed, all qualified license reviewers demonstrated their knowledge of when to apply the checklist and how it was to be used. Therefore, the team proposed and the MRB Chair agreed this recommendation be closed.

Recommendation 4: Implement a financial assurance program consistent with State regulations; that licenses that authorize possession of radioactive material in excess of quantities requiring financial assurance post financial assurance; and, that financial assurance license conditions be consistent with possession limits authorized on the license.

The team reviewed Rhode Island's corrective actions outlined in their PIP, reviewed actions taken by Rhode Island to either amend licenses to lower possession limits or obtain the necessary financial assurance instrumentation, and reviewed licensing actions completed during the review period to determine if the financial assurance program put in place by Rhode Island was consistent with its regulations. The team found that since the 2021 IMPEP review, Rhode Island contacted all licensees who were authorized to possess quantities of material requiring financial assurance. At the time of the on-site review, the team determined that Rhode Island had two licensees who were authorized for possession of material in quantities requiring financial assurance. The team reviewed these licenses and associated financial assurance documents and determined that the correct amounts were obtained based on the licensee's overall possession limits and the appropriate instruments were available and secured. The team also determined that Rhode Island had appropriately amended licenses at the request of the licensee, to lower the licensee's possession limits to below amounts that require financial assurance. The team assessed Rhode Island's new process to review license actions received to determine if financial assurance would be required based on the amounts authorized to be possessed on a license. The team determined that the process put in place by Rhode Island, which includes the use of a Microsoft Excel spreadsheet to aid in the calculation of the unity rule, was effective. Therefore, the team proposed and the MRB Chair agreed this recommendation be closed.

c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 3.4.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory. The team recommends that the three previous recommendations be closed.

d. MRB Chair's Determination

The MRB Chair agreed with the team's recommendation and found Rhode Island's performance with respect to this indicator satisfactory and agreed to close the three recommendations.

### 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, safety and security. An assessment of incident response and allegation investigation procedures, actual implementation of these procedures internal and external coordination, timely incident reporting, 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 [SA-105](#), "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation Activities," and evaluated Rhode Island's performance with respect to the following performance indicator objectives:

- Incident response 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 NMED and closed when all required information has been obtained.
- Allegations are investigated in a prompt, appropriate manner.
- Concerned individuals are notified within 30 days of investigation conclusions.
- Concerned individuals' identities are protected, as allowed by law.

b. Discussion

During the review period, no reportable incidents were received by Rhode Island. This is not unusual as Rhode Island has a small number of licensees. Additionally, the team determined that during the 2021 IMPEP review, which covered a four-year review period, Rhode Island received only two reportable incidents. The team did review a sampling of 10 non-reportable incidents received by Rhode Island during the review period. These incidents all were related to alarms that occurred at scrap and waste facilities. Through review of the documentation and interviews with staff, the team determined that Rhode Island correctly understood when an alarm received at one of these facilities would require reporting. Of the ten non-reportable incidents, the team did not identify any that should have been reported to the NRC. The team reviewed Rhode Island's incident procedure and found that it was compatible.

During the review period, one allegation was received by Rhode Island and one allegation was referred to Rhode Island by the NRC. The team evaluated both allegations and found that Rhode Island took prompt and appropriate action in response to the concerns raised. The allegation received by Rhode Island was appropriately closed and the concerned individual was notified of the actions taken. The individual's identity was protected in accordance with State law. The allegation referred to Rhode Island by the NRC in October 2023 was still in progress. Rhode Island investigated the allegation and provided its findings to the NRC. Based on the information provided by Rhode Island, the NRC is continuing to investigate this concern. Once the NRC completes its investigation and shares additional information with Rhode Island, Rhode Island will take action as appropriate to complete and close the concern in their records. The team reviewed Rhode Island's allegation procedures and found that they were compatible.

c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 3.5.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island's performance with respect to the indicator, Technical Quality of Incident and Allegation Activities, be found satisfactory.

d. MRB Chair's Determination

The MRB Chair agreed with the team's recommendation and found Rhode Island's performance with respect to this indicator satisfactory.

## 4.0 NON-COMMON PERFORMANCE INDICATORS

Four non-common performance indicators are used to review Agreement State programs: (1) Legislation, Regulations, and Other Program Elements; (2) Sealed Source and Device (SS&D) Evaluation Program; (3) Low-Level Radioactive Waste (LLRW) Disposal Program; and (4) Uranium Recovery Program (UR). The NRC retains regulatory authority for SS&D Evaluation, LLRW Disposal, and UR Programs; therefore, only the first non-common performance indicator is applied to this review.

### 4.1 Legislation, Regulations, and Other Program Elements

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 State's agreement with the NRC. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of adequate protection of public health, safety, and security. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. The NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety should be adopted in a time frame so that the effective date of the State requirement is not later than 3 years after the effective date of the NRC's final rule. Other program elements 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 Program Element Table indicating the Compatibility Categories for those program elements other than regulations can be found on the NRC website at the following address: <https://scp.nrc.gov/regtoolbox.html>.

#### a. Scope

The team used the guidance in [SA-107](#), "Reviewing the Non-Common Performance Indicator: Legislation, Regulations, and Other Program Elements," and evaluated Rhode Island's performance with respect to the following performance indicator objectives. A complete list of regulation amendments can be found on the NRC website at the following address: <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 of 1954, 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](#), "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, 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.
- Sunset requirements, if any, do not negatively impact the effectiveness of the State's regulations.

## b. Discussion

Rhode Island's current effective statutory authority is contained in Section 23-1.3 Radiation Control of the Rhode Island Statutes. The Rhode Island Department of Health is designated as the State's Radiation Control Agency. No legislation affecting the radiation control program was passed during the review period.

Rhode Island's administrative rulemaking process takes approximately 12-18 months from drafting to finalizing a rule. The public, NRC, other agencies, and potentially impacted licensees and registrants are offered an opportunity to comment during the process. Comments are considered and incorporated, as appropriate, before the regulations are finalized and approved. The team noted that the State's rules and regulations are subject to "sunset" laws. The last refiling was completed in January 2022. Rhode Island's next refiling will be due in January 2027.

During the review period, Rhode Island submitted 10 proposed regulation amendments, 10 final regulation amendments, and no legally binding requirements or license conditions to the NRC for a compatibility review. The following two amendments were adopted overdue for State, by four and five months respectfully:

- 2018-1, Medical Use of Byproduct Material – Medical Event Definitions, training and Experience, and Clarifying Amendments, 10 CFR Parts 30, 32, and 35
- 2018-2, Miscellaneous Corrections – Organizational Changes 10 CFR Parts 37, 40, 70, and 71

The team learned that Rhode Island's non-emergency rulemaking was on hold during the pandemic which affected the timely adoption of these regulations. Once the rulemaking restriction was lifted, 10 amendments were adopted. The team noted that Temporary Instruction [TI-003](#), "Evaluating the Impacts of the COVID-19 PHE as part of the Integrated Materials Performance Evaluation Program (IMPEP)," states, in part, that for regulations adopted more than 3 years after the effective date of the NRC regulation, due to the State's legislative process being delayed due to the pandemic, should not be considered while establishing the overall indicator rating. The team confirmed that Rhode Island continued to maintain health, safety, and security during the pandemic, therefore, the two overdue regulations were not considered.

Since Rhode Island's regulations do not include 10 CFR Parts 36 and 61, the IMPEP team verified that Rhode Island does not have any licensees subject to those parts.

In review of Rhode Island's compatible procedures, the team noted that Rhode Island has adopted and implemented recent NRC guidance, including changes to NRC's IMC 2800, to maintain an adequate and compatible program.

## c. Evaluation

The team determined that, during the review period, Rhode Island met the performance indicator objectives listed in Section 4.1.a. Based on the criteria in MD 5.6, the team recommends that Rhode Island's performance with respect to the indicator, Legislation, Regulations, and Other Program Elements, be found satisfactory.

d. MRB Chair's Determination

The MRB Chair agreed with the team's recommendation and found Rhode Island's performance with respect to this indicator satisfactory.

#### 4.2 LLRW 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. Those States with existing Agreements prior to 1981, were determined to have continued LLRW disposal authority without the need for an amendment. Although Rhode Island 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 LLRW disposal facility in Rhode Island. Accordingly, the team did not review this indicator.

#### 5.0 SUMMARY

Rhode Island's performance was found to be satisfactory for all six performance indicators reviewed.

The 2023 IMPEP team proposed, and the MRB Chair agreed, that three of the four recommendations from the 2021 IMPEP review should be closed and that the recommendation regarding licensing and inspection documentation be modified. The modified recommendation is that Rhode Island audit licensee's inspection files to ensure inspection documentation is complete and inspection files are stored in a centralized filing system.

Based on the findings and the criteria in MD 5.6, the team recommended, and the MRB Chair agreed, that Rhode Island be removed from heightened oversight. The team considered whether Rhode Island should be moved to monitoring or completely removed from enhanced oversight. Guidance in [SA-122](#), "Enhanced Oversight," allows monitoring to be considered for programs being removed from heightened oversight. The team determined that Rhode Island's performance over this review period did not indicate a period of monitoring would be appropriate since; (1) the team recommended and the MRB approved all indicators be rated satisfactory, (2) program performance has improved over this review period, and (3) recommendations have been implemented. Therefore, based on Rhode Island's improved performance, the team recommended, and the MRB Chair agreed, that Rhode Island be removed from enhanced oversight.

Accordingly, the team recommended, and the MRB Chair agreed, that Rhode Island be found adequate to protect public health and safety and compatible with the NRC's program. The team also recommended, and the MRB Chair agreed, that a periodic meeting take place in approximately 18 months with a second periodic meeting in another 18 months, and the next IMPEP review take place in approximately 4 years.



## LIST OF APPENDICES

Appendix A	IMPEP Review Team Members
Appendix B	Inspector Accompaniments

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

Sherrie Flaherty, NMSS	Team Leader Technical Staffing and Training Legislation, Regulations, and Other Program Elements Inspector Accompaniments
Monica Ford, Region I	Technical Quality of Licensing Actions Technical Quality of Incident and Allegation Activities
Angela Wilbers, Kentucky	Status of Materials Inspection Program Technical Quality of Inspections

## APPENDIX B

### INSPECTOR ACCOMPANIMENTS

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

Accompaniment No.: 1	License No.: 7A-051-02
License Type: Gamma Knife	Priority: 2
Inspection Date: 09/06/23	Inspector's initials: TC

Accompaniment No.: 2	License No.: 3D-117-02
License Type: Industrial Radiography	Priority: 1
Inspection Date: 09/07/23	Inspector's initials: MB

Accompaniment No.: 3	License No.: 7B-131-01
License Type: Mobile Medical	Priority: 3
Inspection Date: 09/08/23	Inspector's initials: DK

## **RHODE ISLAND MANAGEMENT REVIEW BOARD PARTICIPATION – JANUARY 17, 2024**

### **MRB:**

- **John Lubinski**, Director, Office of Nuclear Material Safety and Safeguards, and the acting chair of today's MRB;
- **Jessica Bielecki**, the Assistant General Counsel for Rulemaking, Agreement States and Fee Policy;
- **Kevin Williams**, the Director, Division of Materials Safety Security, State, and Tribal Programs
- **John Monninger**, the Regional Administrator, NRC Region IV;
- **Dave Matos**, the OAS representative to the MRB, from the State of Georgia.

### **RHODE ISLAND:**

- **Alexander Hamm**, Supervising Radiological Health Specialist, Center for Health Facilities Regulation (in-person)
- **Joseph "Joe" Catalano**, Assistant Director of Health (via Teams)
- **Maria Barnes**, Center for Health Facilities Regulation
- **Diane Pelletier**, Center for Health Facilities Regulation, Division of Environmental Health, Rhode Island Department of Health

### **IMPEP Team:**

- **Sherrie Flaherty**, NMSS
- **Monica Ford**, RI
- **Angela Wilbers**, Radiation Health Specialist, Commonwealth of Kentucky

### **NRC and MSST MEMBERS OF THE PUBLIC:**

- Adelaide Giantelli, NMSS
- Robert Johnson, NMSS
- Lee Smith, MSST
- Jacob Zimmerman, R
- Lisa Forney, RI
- Shawn Seely, RI
- Julio Lara, RIV
- Jeff Lynch, SLPB, MSST
- Karen Meyer, SLPB, MSST
- Kelli Trotter, SLPB, MSST
- Mary Casto, SLPB, MSST

### **Other Members of the Public:**

- James Nizamoff, Maine Radiation Control Program
- Nathan Saunders, Maine Radiation Control

There were no comments from Members of the Public. The meeting began at approximately 1:30 p.m. (ET) and was adjourned at approximately 3:25 p.m. (ET)

RHODE ISLAND FINAL IMPEP REPORT DATE February 5, 2024

DISTRIBUTION:

RLewis, NMSS

KWilliams, NMSS/MSST

TClark, NMSS/MSST

PKrohn, R-I/DRS

JZimmerman, NMSS/DFM

AGiantelli, NMSS/MSST/SMPB

MFord, R1/DRSS

FGaskins, R-I/DNMS

SSeeley, R-I/DNMS/MLAB

RJohnson, NMSS/MSST/SLPB

AWhite, NMSS/MSST/SLPB

SFlaherty, NMSS/MSST/SLPB

LSmith, NMSS/MSST

**ADAMS Accession No.: ML24029A119**

OFFICE	NMSS/MSST	NMSS		
NAME	LSmith	LSJLubinski	JL	
DATE	Jan 29, 2024	Feb 2, 2024		

**OFFICIAL RECORD COPY**