

March 14, 2014

MEMORANDUM TO: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Brian E. Holian, Acting Director **/RA MLZobler/**
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: REPORT ON AGREEMENT STATES' AND U.S. NUCLEAR
REGULATORY COMMISSION'S RADIOACTIVE MATERIALS
PROGRAMS FOR CALENDAR YEAR 2013

Enclosed is the annual report to inform the Commission of the status of the U.S. Nuclear Regulatory Commission and Agreement State Radioactive Materials Programs, as required by the June 30, 1997, Staff Requirements Memorandum on SECY-97-054, "Final Recommendations on Policy Statements and Implementing Procedures for: 'Statement of Principles and Policy for the Agreement State Programs' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs.'"

Enclosure:
Report on Agreement States' and NRC's
Radioactive Materials Programs

cc: SECY
OGC
OCA
OPA
CFO
EDO

CONTACT: Lisa Dimmick, FSME/MSSA
(301) 415-0694

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OFC	FSME/MSSA	FSME/MSSA	FSME/MSSA	FSME/MSSA	Tech Ed	FSME
NAME	LDimmick	ADWhite	JMoses	LADudes	CPoland	MLZobler for BHolian
DATE	02/25/2014	2/27/2014	2/27/2014	3/4/2014	3/12/2014	3/14/2014

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**ANNUAL REPORT FOR U.S. NUCLEAR REGULATORY COMMISSION
AND AGREEMENT STATE RADIOACTIVE MATERIALS PROGRAMS**

CALENDAR YEAR 2013

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to periodically review the NRC and Agreement State radioactive materials programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and to ensure that Agreement State programs are compatible with the NRC's program. The frequency of IMPEP reviews for a particular program range from 1 to 5 years, based on the program's performance. All reviews are conducted in accordance with the NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. IMPEP reviews are conducted by teams of the NRC and Agreement State staff. IMPEP teams use the established criteria in MD 5.6 and guidance documents maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME) to effectively assess the adequacy of each the NRC and Agreement State materials programs as well as the compatibility of each Agreement State. The NRC staff also conducts periodic meetings between IMPEP reviews. These periodic meetings were created to help the NRC and the Agreement States remain knowledgeable of the status of each other's respective program.

The NRC tracks the adequacy and compatibility status of each Agreement State program and adequacy of each NRC regional program. Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of the date of this report. Regarding the adequacy provision of Section 274b. of the Atomic Energy Act (the Act) of 1954, as amended, 30 of the 37 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arkansas, Georgia, Kentucky, Massachusetts, New York, North Dakota, and Rhode Island have a program finding of "adequate to protect public health and safety, but needs improvement." One program has been found adequate, but needs improvement, for two IMPEP cycles. Regarding the compatibility provision of Section 274b. of the Act, 34 of the 37 Agreement State programs have a program finding of "compatible with NRC's program." California, New Hampshire, and New York have a program finding of "not compatible with the NRC's program." Two programs have been found not compatible for two IMPEP cycles. All NRC regional materials programs currently have a program finding of "adequate to protect public health and safety," as shown in Attachment 2 of this report.

In order to provide timely feedback to programs under review, the NRC has set a goal to issue a publicly available final report for each program reviewed within 104 days from the last day of the review. Attachment 3 presents NRC's performance for IMPEP report issuance against the 104-day goal for the reviews that took place in NRC Fiscal Year (FY) 2013. For three reports, the timeliness metric was not met. The latest was 18 days past the metric. On occasion, the scheduling of the Management Review Board and concurrence process adversely impacts the timely issuance of the final report. However, with all IMPEP reviews, the draft and proposed reports are provided to the respective program and the program is a party to the MRB deliberations.

Enclosure

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When programmatic weaknesses exist in an Agreement State program, the NRC primarily uses two processes, Heightened Oversight and Monitoring, to ensure that an Agreement State program needing improvement is progressing toward re-establishing a fully satisfactory program. A third process, Probation, may be considered when one or more performance indicators are unsatisfactory and are of such safety significance that assurance of the program's ability to protect public health may be degraded. Under Heightened Oversight, a program is required to develop a Program Improvement Plan (Plan) to address IMPEP findings and recommendations. The Plan is submitted to the NRC for approval prior to implementation. A program on Heightened Oversight must also submit status reports prior to its recurring conference calls conducted by the NRC staff with State program managers and staff to discuss program status. Under Probation, the same requirements as Heightened Oversight apply. In addition, Probation requires a press release, *Federal Register* notice, and governor and congressional delegation notification announcing the affected Agreement State's probationary status. For Monitoring, a State's managers and staff participate in quarterly calls with the NRC staff to discuss program status. The decision to put an Agreement State program on either Heightened Oversight or Monitoring is done at the direction of the Management Review Board (MRB); Probation requires Commission approval. An Agreement State program can be placed on Heightened Oversight or Monitoring as a result of an IMPEP review or periodic meeting. At the close of 2013, one State was on Probation, one on Heightened Oversight, and six States were on Monitoring. Since 2005, the number of Agreement State programs on an enhanced oversight status has ranged from 6 to 8. Discussions of each of the States enhanced oversight are provided in the corresponding sections below. A summary of recent activities related to States on enhanced oversight is presented in Attachment 4.

STATES ON PROBATION

Georgia:

On January 17, 2013, the MRB met to consider the findings of the Georgia Agreement State IMPEP review. Significant deficiencies were noted throughout the program that had the potential to impact public health and safety if left uncorrected, despite the fact that Georgia had been placed on Monitoring status in 2008 as a result of weaknesses in the program. The State was found unsatisfactory for the performance indicators, Technical Quality of Inspections and Technical Quality of Incident and Allegation Activities; satisfactory, but needs improvement, for the performance indicators, Technical Staffing and Training, Status of Materials Inspection Program, and Technical Quality of Licensing Actions; and satisfactory for the two non-common performance indicators reviewed (Compatibility Requirements and Sealed Source and Device Evaluation). Overall, the program was found adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The MRB discussed and agreed (by majority vote) with the team's recommendation that the State be placed on Probation (rather than Heightened Oversight) due to the significant performance issues identified and lack of management oversight. The review team concluded, and the MRB agreed, that Heightened Oversight by the NRC without the formal declaration of Probation may not result in the necessary program improvements needed to assure protection of public health and safety. The State submitted a Program Improvement Plan on March 7, 2013, that documented immediate and long term corrective actions. The Commission approved Probation in July 2013. A followup IMPEP review of the State's program was conducted January 27-31, 2014. Final

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results and recommendations are pending the MRB review. Georgia was the first Agreement State Program to be placed on Probation.

STATES ON HEIGHTENED OVERSIGHT

New York:

On October 11, 2011, the MRB met to consider the findings of the New York Agreement State IMPEP review. The State was found unsatisfactory for the performance indicators, Technical Quality of Incident and Allegation Activities and Compatibility Requirements; satisfactory, but needs improvement for the performance indicators, Technical Staffing and Training and Technical Quality of Licensing Actions; and satisfactory for the other four indicators reviewed. Overall, the MRB found the New York Agreement State Program adequate, but needs improvement, to protect public health and safety, and is not compatible with the NRC's program due to the extensive number of overdue regulations. Because of the significance of the findings, the MRB determined that the New York Program should continue the period of Heightened Oversight. New York was initially put on Heightened Oversight in 2005 as a result of the large number of overdue regulations by each of the three agencies that comprise the New York agreement. In response to the 2011 IMPEP final report, each agency developed plans to establish tasks and target completion dates as means to document their implementation of the review team's recommendations and adoption of overdue regulations. Periodic meetings were held with each of the three New York agencies in September 2012. An MRB met on March 5, 2013, to discuss New York Agreement State periodic meetings. The next full IMPEP review of the New York Agreement State Program was scheduled for September 2013, but deferred until March 2014, at the request of the New York Program. The New York program indicated staff departures from the New York City agency just prior to the onsite review could adversely impact the onsite review. It should be noted that New York has been found not compatible with the NRC's program for two IMPEP cycles. Through on-going Heightened Oversight calls, New York has shown improvement with overdue regulations.

STATES ON MONITORING

California:

Following the 2008 IMPEP review the California Agreement State Program was removed from Heightened Oversight and placed on Monitoring by the MRB as the Program had corrected a number of performance weaknesses. However, the IMPEP team found that while the Program made progress in addressing overdue regulations, it still had several to complete. This situation was unchanged during the Program's last IMPEP conducted in October 2011. California was found adequate to protect public health and safety, and not compatible with the NRC's program due to the extensive number of overdue amendments. California committed to apply an additional resource to regulation development. The MRB determined that California should remain on Monitoring. California had a periodic meeting in January 2013 and will have a full IMPEP in FY 2016. During the periodic meeting the program had shown progress in addressing overdue regulations. It should be noted that California has been found not compatible with the NRC's program for two IMPEP cycles. Through on-going Monitoring calls, California has shown improvement with overdue regulations.

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Kentucky:

Following the periodic meeting in July 2005, the Kentucky Agreement State Program was initially placed on Monitoring by the MRB, primarily for staffing shortages and declining performance. During the 2008 IMPEP, the review team noted some marked improvements in the program; however, several performance weaknesses persisted that warranted continued NRC oversight. The MRB agreed with the review team's recommendation to keep the Kentucky program on Monitoring during 2008 MRB meeting. Staff held periodic meetings with the Commonwealth in September 2009 and February 2011. The Program continued to make improvements. From the IMPEP review in June 2012, the review team found the Commonwealth's performance was satisfactory for five performance indicators, satisfactory but needs improvement for the performance indicator Compatibility Requirements, and unsatisfactory for the performance indicator Status of Materials Inspection Program. The MRB directed that Kentucky remain in a Monitoring status. Kentucky will have a periodic meeting in June 2014. The next IMPEP will be in June 2016. It should be noted that Kentucky has been found adequate, but needs improvement, for two IMPEP cycles. Through on-going Monitoring calls Kentucky has shown improvement with overdue inspections and regulations.

Maine:

Following the periodic meeting in June 2013, the MRB placed the Maine Agreement State Program on Monitoring. The Maine Agreement State Program had shown declining performance since the May 2011 IMPEP review largely attributed to staffing vacancies. A periodic meeting is planned for May 2014 and the next IMPEP review of the Maine Agreement State Program is scheduled for May 2015.

New Hampshire:

Following the October 2012 IMPEP review, the New Hampshire Agreement State Program was placed on Monitoring by the MRB. The MRB determined that Monitoring would be a useful tool in assessing the State's progress toward completion of overdue regulations. New Hampshire's performance was found adequate to protect public health and safety, but not compatible with the NRC's program due to the extensive number of overdue regulations. New Hampshire will have a full IMPEP in 2016 with a periodic meeting occurring in 2014. The periodic meeting will place additional emphasis on the status of Compatibility Requirements.

North Dakota:

Following the 2011 IMPEP review, the North Dakota Agreement State was put on Heightened Oversight for performance weakness in Technical Quality of Inspections, Status of the Materials Inspection Program, Technical Quality of Licensing Actions, and Technical Quality of Incident and Allegation Activities. A followup IMPEP was conducted in April 2013, the program made significant improvements in performance and addressed the recommendations. The MRB directed that Heightened Oversight be discontinued and Monitoring be implemented. The next full IMPEP review of the North Dakota Agreement State Program is scheduled for April 2015 and a periodic meeting will be held in April 2014.

Rhode Island:

Following the October 2011 IMPEP, the Rhode Island Agreement State Program was placed on Monitoring by the MRB. The IMPEP review team found the State's performance satisfactory for

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the performance indicators Technical Staffing and Training, Technical Quality of Licensing, and Technical Quality of Incidents and Allegations; satisfactory but needs improvement for the performance indicators Technical Quality of Inspections and Compatibility Requirements; and unsatisfactory for the performance indicator Status of Materials Inspection Program. Overall, the MRB found the Program adequate to protect public health and safety, but needs improvement, and compatible with NRC's program. Rhode Island had a periodic meeting in December 2012 and showed improvement with completion of inspections. Rhode Island will have a full IMPEP review in October 2015. Following the November 2013 quarterly monitoring call, the Program requested a letter of support be sent to the Director of Public Health regarding the need to maintain qualified staff. State budget constraints have prevented the Program from filling vacant positions.

STATES REMOVED FROM ADDITIONAL OVERSIGHT PROCESS

Arkansas:

Following a 2007 periodic meeting the Arkansas Agreement State Program was placed on Heightened Oversight by the MRB because of the unresolved performance weaknesses identified during the 2006 IMPEP review. A 2009 IMPEP review confirmed the program made some progress in addressing the performance weaknesses; however, staffing issues persisted. Following the April 2011 followup IMPEP, the Program was removed from Heightened Oversight and put on Monitoring by the MRB. The Program made significant improvements with staffing and training and in the status of the materials inspection program, and made progress with the materials licensing backlog. By the periodic meeting in October 2012, the Program had completed actions to address all recommendations. The MRB determined that the period of Monitoring could be discontinued. A full IMPEP was conducted in October 2013. The MRB is scheduled for April 2014.

TRENDING ANALYSIS

The trending analysis evaluates IMPEP data from a full IMPEP cycle, as well as the calendar year. The outcome of the trend analysis serves to enhance the IMPEP program and improve communication.

IMPEP data from a full IMPEP cycle (2009–2013) was evaluated for trends, specifically in the area of recommendations issued to address program weaknesses. First, the evaluation shows that recommendations are commonly offered for programs to improve the timely adoption of regulations and to ensure timely notification of events to the National Materials Events Database and the NRC Operations Center.

Second, staffing and budget fiscal data are not specifically collected under IMPEP. However, information describing a program's staffing level and program's ability to retain and hire is part of staffing description under the performance indicator, Technical Staffing and Training, along with how an Agreement State program may be funded. The trending review indicates that a number of Agreement State still experience staffing and budget difficulties. How each program addresses staffing and budgets and the impact on program performance differs State by State. Under IMPEP, performance recommendations are frequently offered when staffing vacancies

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persist. In addition, the NRC will send a letter of support to senior program officials at the request of the radiation control program management. Sustaining a high level of performance when there is significant program staff turnover is a challenge for materials programs.

Third, the trending review demonstrated weaknesses in two areas under the Technical Quality of Licensing: preceptor attestations for medical users and pre-licensing guidance implementation. During IMPEP reviews in 2013, IMPEP teams identified weaknesses in these licensing areas for three of the nine programs reviewed. The programs were not fully aware of the licensing expectations for preceptor attestations and pre-licensing guidance. The staff has prepared an Agreement State letter informing the States of these trends.

SUMMARY

IMPEP reviews continued to confirm that the Agreement State programs put health and safety first and foremost. Programs reprioritize and manage workloads to overcome staffing or budgeting constraints to the best of their ability. IMPEP reviews confirmed that the Agreement States implement high-priority programmatic changes when performance issues are identified by the NRC's IMPEP process. Materials program performance from 2013 is on par with performance observed in 2012.

Attachments:

1. Summary of Agreement States' Adequacy and Compatibility Statuses
2. Summary of NRC Radioactive Materials Programs Adequacy Statuses
3. IMPEP Report Tracking Fiscal Year 2012
4. Heightened Oversight and Monitoring Chart

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of February 20, 2014)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2010	adequate	compatible
Arizona	2012	adequate	compatible
Arkansas	2011	adequate, but needs improvement	compatible
California	2012	adequate	not compatible
Colorado	2010	adequate	compatible
Florida	2011	adequate	compatible
Georgia	2012	adequate, but needs improvement	compatible
Illinois	2013	adequate	compatible
Iowa	2012	adequate	compatible
Kansas	2010	adequate	compatible
Kentucky	2012	adequate, but needs improvement	compatible
Louisiana	2012	adequate	compatible
Maine	2011	adequate	compatible
Maryland	2011	adequate	compatible
Massachusetts	2010	adequate, but needs improvement	compatible
Minnesota	2012	adequate	compatible
Mississippi	2013	adequate	compatible
Nebraska	2011	adequate	compatible
Nevada	2013	adequate	compatible
New Hampshire	2013	adequate	not compatible
New Jersey	2011	adequate	compatible
New Mexico	2013	adequate	compatible
New York	2011	adequate, but needs improvement	not compatible
North Carolina	2009	adequate	compatible
North Dakota	2013	adequate, but needs improvement	compatible
Ohio	2014	adequate	compatible
Oklahoma	2010	adequate	compatible

Oregon	2013	adequate	compatible
Pennsylvania	2010	adequate	compatible
Rhode Island	2012	adequate, but needs improvement	compatible
South Carolina	2012	adequate	compatible
Tennessee	2012	adequate	compatible
Texas	2010	adequate	compatible
Utah	2011	adequate	compatible
Virginia	2011	adequate	compatible
Washington	2013	adequate	compatible
Wisconsin	2009	adequate	compatible

SUMMARY OF NRC RADIOACTIVE MATERIALS PROGRAMS' ADEQUACY STATUSES
(As of February 20, 2014)

REGION	REVIEW YEAR	ADEQUACY FINDING
HQ SS&D	2010	adequate
Region I	2010	adequate
Region III	2012	adequate
Region IV	2009	adequate

**IMPEP REPORT TRACKING
FISCAL YEAR 2013**

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
New Hampshire	10/12	96
Georgia	10/12	102
Mississippi	4/13	91
North Dakota	4/13	118*
Illinois	4/13	118*
Washington	5/13	104
New Mexico	6/13	102
Nevada	7/13	103
Oregon	8/13	122*

*Delays attributed to report concurrence

HEIGHTENED OVERSIGHT AND MONITORING CHART
(AS of February 20, 2014)

State	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
<i>PROBATION</i>				
Georgia	1/27-31/2014	Senior Management Exit meeting for IMPEP 2/10/2014	Management Review Board, 4/15/2014	1. Bimonthly call: To be determined 2. Program Improvement Plan updates: To be determined 3. Next IMPEP: To be determined
<i>HEIGHTENED OVERSIGHT</i>				
New York	6/6-16/2011	Quarterly Call 11/14/2013	IMPEP 3/17/28/2014	1. Quarterly calls 2. Status Reports due no later than 5 days prior to calls 3. Next IMPEP: 3/17-28/2014
<i>MONITORING</i>				
California	10/17-21/2011	Quarterly Call 1/9/2014	Quarterly Call 4/21/2014	1. Quarterly calls 2. Next IMPEP: FY 2016
Kentucky	6/11-15/2012	Quarterly Call 11/21/2013	Quarterly Call 2/26/2014	1. Quarterly calls 2. Next IMPEP: FY 2016
Maine	5/2-6/2011	Quarterly Call 2/20/2014	Quarterly Call 5/2014	1. Quarterly calls 2. Next IMEP: FY2015
New Hampshire	10/2-5/2012	Periodic Call 9/20/2013	Periodic Call 1/2014	1. Calls about every four months 2. Next IMPEP: FY 2017

State	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
North Dakota	4/22-26/2013	Quarterly Call 1/22/2014	Quarterly Call 4/2014	1. Quarterly calls 2. Next IMPEP: FY 2015
Rhode Island	10/24-28/2011	Quarterly Call 11/7/2013	Quarterly Call 2/24/2014	1. Quarterly calls 2. Next IMPEP: FY 2016