

POLICY ISSUE
(NOTATION VOTE)

July 22, 2014

SECY-14-0074

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: DISCONTINUANCE OF THE PROBATION PERIOD FOR THE
GEORGIA AGREEMENT STATE PROGRAM

PURPOSE:

The purpose of this paper is to request Commission approval to discontinue the Probation period for the Georgia Agreement State Program (the Georgia Program), as described in the U.S. Nuclear Regulatory Commission (NRC) Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. This paper does not address any resource implications.

BACKGROUND:

Section 274b. of the Atomic Energy Act of 1954, as amended, provides the statutory basis by which the NRC relinquishes, by agreement with a State, portions of its regulatory authority to license and regulate byproduct materials, source materials, and quantities of special nuclear materials under critical mass, when the NRC determines that the State program is adequate to protect public health and safety and compatible with the NRC's program. Through the Agreement State program, 37 States have signed formal agreements with the NRC. The NRC retains an oversight role and uses the IMPEP to periodically review Agreement State programs for adequacy to protect public health and safety, and compatibility with the NRC's regulatory program.

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The NRC typically reviews the Regions and Agreement States every 4 years. However; the timeline may be adjusted based on performance. Depending on program performance, at least one periodic meeting is conducted between IMPEP reviews. Periodic meetings include exchange of status information and may identify additional potential areas of improvement for the NRC Region and Agreement State programs. Periodic meetings are not formal reviews, but are open, interactive discussions of program status and performance in preparation for the next IMPEP review. A Management Review Board (MRB) composed of senior NRC managers (with an Agreement State liaison attending) makes the final determination of adequacy for the NRC Regions, and both adequacy and compatibility of each Agreement State.

If an Agreement State program is found adequate, but needs improvement, or not compatible, the MRB may direct an additional action (e.g., Monitoring or Heightened Oversight). These additional actions increase the level of communication between the NRC and the Agreement State and supports Agreement State program performance improvements. In cases where the Commission finds that program weaknesses exist regarding the adequacy and/or compatibility of an Agreement State's program yet the weaknesses are not so serious as to find the program inadequate to protect public health and safety, one of the options available to ensure continued protection of public health and safety is to place the Agreement State on Probation. Probation is also an option when an Agreement State on Heightened Oversight has not addressed program weaknesses identified in previous reviews during the period of Heightened Oversight. Additional information on the IMPEP program can be found in MD 5.6.

DISCUSSION:

The 2012 IMPEP Review

In 2012, the NRC conducted an IMPEP review of the Georgia Program. The IMPEP team identified an overall decline in performance since the 2008 IMPEP review. Although the Georgia Program had been placed on Monitoring, and Georgia took actions to address specific observations from the 2008 IMPEP review, the overall performance continued to degrade and a number of significant performance deficiencies were identified during the 2012 IMPEP review. Specifically, the team identified performance deficiencies involving 1) the technical quality of observed inspections, 2) a backlog of overdue high priority inspections, 3) a failure to respond to a materials event where a radiation device was allowed to remain in the public domain for an extended period of time, and 4) the failure to properly adopt pre-licensing verification guidance such that a new license was approved for a high risk source without ensuring that the source would be used for its intended purpose. The review team also observed significant communication issues between the Georgia staff and management which affected the safety culture and performance of the program. The review team recommended to the MRB that the Georgia Program be found adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. Due to the significant programmatic weaknesses identified during the 2012 review, the team made 12 recommendations regarding the need for performance improvements by the Georgia Program. The team also recommended that the MRB place the Georgia Program on Probation.

On January 17, 2013, the MRB met to discuss the 2012 Georgia Program IMPEP review. The MRB found the Georgia Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The MRB requested the Commission's approval to place the Georgia Program on Probation. The Commission approved placing the State of Georgia on Probation as of July 9, 2013. (SRM-SECY-13-0051)

In response to the draft 2012 IMPEP report, the Georgia Program described the actions taken to address the recommendations and performance issues identified by the IMPEP team. These actions included organizational changes to improve its management oversight of the program. The Georgia Program replaced the radioactive materials program manager and hired two new technical staff. The Georgia Program management responded to the IMPEP report by submitting the State's Program Improvement Plan (Plan) on March 7, 2013, (ML13070A161). The Georgia Program Managers expressed their firm commitment to making improvements. The latest revision of the Georgia Program Improvement Plan is provided as Enclosure 1.

The 2014 IMPEP Review

During the 2014 IMPEP review, the team found that changes made by the Georgia Program in response to the previous IMPEP review resulted in significant improvement in management and staff communications. The team also found an increased focus on Program needs from senior level State management as evidenced by the appointment of a new program manager and providing resources for staffing. The team found that four of the performance indicators had improved, one stayed the same, and the team downgraded the indicator-Status of the Materials Inspection Program because of the number of overdue inspections. This inspection deficiency was identified by the Program prior to the IMPEP review, and the Program reported that they had completed a majority of the overdue inspections at the time of the IMPEP review. The review team made one new recommendation regarding the indicator, Technical Quality of Inspections: for the State to implement its inspection procedures to ensure that inspectors document the reason for missing temporary job site inspections; document details and circumstances of violations in inspection reports and Notice of Violations; consider inspecting licensees more frequently following the occurrences of serious violations; conduct performance based inspections; and complete its enforcement procedure for assigning severity levels of violations. Of the 12 recommendations made during the 2012 IMPEP review, 10 were closed, and the team determined that two recommendations for the indicator, Technical Quality of Licensing Actions should remain open since actions to address these were in progress. The team recommended that the State be placed on Heightened Oversight.

On April 15, 2014, the MRB met to discuss the IMPEP review. The MRB directed that the recommendation regarding the Program's implementation of the pre-licensing guidance can be closed since the team determined that license reviewers were implementing these requirements. The MRB also directed the team to make a new recommendation specific to the actions in progress by the Program (i.e., finalize its pre-licensing procedure as official policy and provide staff training). The MRB agreed that eight of the recommendations from the 2012 IMPEP review regarding program performance for the indicators, Status of the Materials Inspection Program, Technical Quality of Inspections, and Technical Quality of Incident and Allegation Activities, can be closed. The two recommendations regarding the Sealed Source and Device program are no longer applicable since the State returned the program to the NRC in August 2013. The MRB agreed with the team's recommendation that

the Georgia Program be found adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program. The MRB agreed that the Georgia Program be placed on Heightened Oversight, and that the Probation period be discontinued. The MRB noted that Commission approval is needed to discontinue the Probation period. During the MRB meeting, the Georgia Program reported that since the IMPEP review, they had lost two staff members and were in the process of filling these positions. Additionally, they reported that all but one of the overdue inspections had been completed. While some actions to improve performance are in progress as noted in the Plan, the team determined that the Georgia Program has sufficiently addressed and implemented the actions committed to in the Plan. The final 2014 IMPEP report (ML14121A618) is provided as Enclosure 2. The minutes for the April 15, 2014, MRB meeting (ML14149A465) are provided as Enclosure 3.

Georgia Program Response

Georgia Program managers submitted their responses to the draft 2014 IMPEP report on April 2, 2014 (ML14014A159). In the response, the Georgia Program described the actions taken prior to the MRB to address the recommendations and performance issues identified by the IMPEP team. In the response and during the MRB meeting, the Georgia Program managers expressed their firm commitment to making improvements and noted that the changes made since the last IMPEP review (change in program manager, added staffing, and implementation of weekly staff-management meetings) were evidence of this commitment.

COMMITMENTS:

The NRC staff commits to (1) hold bimonthly calls with the Georgia Program to discuss its Plan including the progress made in addressing recommendations from the 2012 and 2014 IMPEP reports; (2) conduct a full IMPEP review in 2 years from the date of the Georgia Program MRB meeting (April 2014); and (3) schedule a periodic meeting in 1 year from the IMPEP review.

RECOMMENDATION:

The NRC staff recommends that the Commission:

Approve: Discontinuance of the Probation period for the Georgia Program.

Note:

- a). The Notice of Discontinuance of the Probation period will be published in the *Federal Register* (Enclosure 4).
- b). A letter from the Chairman notifying the Governor of Georgia of this action, including initiation of a period of Heightened Oversight (Enclosure 5).

COORDINATION:

The Office of the General Counsel has no legal objection to the approval of discontinuance of the Probation period for the Georgia Program. The Office of the Chief Financial Officer has no objection to the approval of the discontinuance for the period of Probation for the George Agreement State Program as there are no resource implications.

/RA/

Mark A. Satorius
Executive Director
for Operations

Enclosures:

- 1. Georgia Program Improvement Plan
- 2. Georgia 2014 Final IMPEP Report
- 3. Minutes of Georgia MRB meeting
- 4. *Federal Register* notice
- 5. Governor Letter

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