



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

November 9, 2021

Ms. Sandra Ely, Division Director
Environmental Protection Division
New Mexico Environmental Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Dear Ms. Ely:

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) in the review of Agreement State and NRC radiation control programs. Enclosed is the draft IMPEP report, which documents the results of the New Mexico Agreement State review conducted September 20-24, 2021. The team's preliminary findings were discussed with you and your staff on the last day of the review. The team's proposed recommendations are that the New Mexico Agreement State Program be found adequate to protect public health and safety and compatible with the NRC's program. However, the team found New Mexico's performance to be satisfactory but needs improvement for the performance indicator Technical Quality of Licensing Actions. The team also made three new recommendations and will propose that the recommendation from the 2017 IMPEP review remain open.

The NRC conducts periodic reviews of radiation control programs to ensure that public health and safety are adequately protected from the potential hazards associated with the use of radioactive materials and that Agreement State programs are compatible with the NRC's program. The IMPEP process uses a team comprised of Agreement State and NRC staff to perform the reviews. All reviews use common criteria in the assessment and place primary emphasis on performance. The final determination of adequacy and compatibility of each program, based on the team's report, is made by the Chair of the Management Review Board (MRB) after receiving input from the MRB members. The MRB is composed of NRC senior managers and an Agreement State program manager.

In accordance with procedures for implementation of IMPEP, we are providing you with a copy of the draft report for your review and comment prior to submitting the report to the MRB. Comments are requested within 4 weeks from your receipt of this letter. This schedule will permit the issuance of the final report in a timely manner.

The team will review the response, make any necessary changes to the report, and issue it to the MRB as a proposed final report. The MRB meeting is scheduled to be conducted as a hybrid meeting on Thursday, January 6, 2022, at 1:00pm EST via Microsoft Teams. The NRC conference room location will be determined prior to the meeting and in-person attendance will be flexible. The NRC will provide you with Microsoft Teams connection information prior to the meeting.

If you have any questions regarding the enclosed report, please contact Monica Ford at 610-337-5214.

Thank you for your cooperation.

Sincerely,



Signed by Anderson, Brian
on 11/09/21

Brian C. Anderson, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety and Safeguards

Enclosure:
2021 New Mexico Draft IMPEP Report

cc: Santiago Rodriguez, Bureau Chief
Radiation Control Bureau
Michael Ortiz, Program Manager
Radiation Control Bureau

SUBJECT: NEW MEXICO FY2021 DRAFT IMPEP REPORT DATE NOVEMBER 9, 2021

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INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM
REVIEW OF THE NEW MEXICO PROGRAM

September 20-24, 2021

DRAFT REPORT

EXECUTIVE SUMMARY

The results of the Integrated Materials Performance Evaluation Program (IMPEP) review of the New Mexico Agreement State Program are discussed in this report. The review was conducted in Santa Fe, New Mexico, from September 20-24, 2021. In-person inspector accompaniments were conducted August 23-26, 2021.

The team found New Mexico's performance to be satisfactory for the following five performance indicators:

- Technical Staffing and Training;
- Status of Materials Inspection Program;
- Technical Quality of Inspections;
- Technical Quality of Incident and Allegation Activities; and
- Legislation, Regulations, and Other Program Elements.

The team found New Mexico's performance to be satisfactory but needs improvement for the performance indicator Technical Quality of Licensing Actions.

The team made three new recommendations for improved program performance regarding tracking of initial inspections, implementing consistent use of the Risk Significant Radioactive Materials Checklist, and processing renewal applications in accordance with current guidance. Additionally, the team concluded that the recommendation from the 2017 IMPEP review regarding implementation of a well-conceived and balanced staffing strategy should remain open.

In accordance with the NRC's Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," the team recommends that the New Mexico Agreement State Program be found adequate to protect public health and safety and compatible with the U.S. Nuclear Regulatory Commission's program. Additionally, the team recommends that two periodic meetings take place approximately 18 and 36 months after the IMPEP review and that the next full IMPEP review take place in approximately 4 years.

1.0 INTRODUCTION

The New Mexico Agreement State Program review was conducted on-site from September 20-24, 2021, by a team of technical staff members from the U.S. Nuclear Regulatory Commission (NRC) and the State of Iowa. Team members are identified in Appendix A. In-person inspector accompaniments were performed August 23-26, 2021. 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 July 1, 2017 to September 24, 2021, were discussed with New Mexico 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 the State on February 19, 2021. New Mexico provided its response to the questionnaire on September 10, 2021. A copy of the questionnaire response is available in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number [ML21260A122](#).

The New Mexico Agreement State Program is administered by the Radiation Control Bureau which is located in the Environmental Protection Division. The Environmental Protection Division is located within the New Mexico Environment Department. Organization charts are available in ADAMS using the Accession Number [ML21260A120](#).

At the time of the review, New Mexico regulated 206 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) Agreement between the NRC and the State of New Mexico. The team evaluated the information gathered against the established criteria for each common and applicable non-common performance indicator and made a preliminary assessment of the State's performance.

2.0 PREVIOUS IMPEP REVIEW AND STATUS OF RECOMMENDATIONS

The previous IMPEP review concluded on June 30, 2017. The final report is available in ADAMS (Accession Number [ML17276A100](#)). The results of the review and the status of the associated recommendation are as follows:

Technical Staffing and Training: Satisfactory

Recommendation: As a result of the 2017 IMPEP review, the team recommended and the MRB agreed that the State continue to implement a well-conceived and balanced staffing strategy to ensure the program's continued adequacy and compatibility.

Status: At the time of the 2017 IMPEP review the New Mexico Agreement State Program had three staff level vacancies. During this review period two additional technical staff left the Program. To address these vacancies, five technical staff were hired and at this time the New Mexico Agreement State Program is considered fully staffed. The newly hired staff have been on board between 2 and 30 months and 4 are going through the qualification process to become fully qualified inspectors. The team found that while there are no current vacancies, the New Mexico Agreement State Program has only one qualified license reviewer and during the review period did not

qualify any additional staff to perform licensing actions. This is similar to the 2017 IMPEP review period in that the 2017 IMPEP report noted in Section 3.4 that there was only one qualified license reviewer. The team looked at the overall staffing of the New Mexico Agreement State Program and determined there was an imbalance in the number of staff who perform inspections and the number of staff who perform licensing actions. Additionally, the team determined that some of the items leading to downgraded program performance identified in Section 3.4 of the report are related to there being only one qualified license reviewer. New Mexico Agreement State Program management stated during the review that they plan to qualify at least one of the newly hired staff in licensing to address this recommendation.

The team determined this recommendation should remain open until a balance in staff qualified to perform licensing and inspection activities exists such that no downgraded program performance is seen.

Status of Materials Inspection Program: Satisfactory
Recommendation: None

Technical Quality of Inspections: Satisfactory
Recommendation: None

Technical Quality of Licensing Actions: Satisfactory
Recommendation: None

Technical Quality of Incident and Allegation Activities: Satisfactory
Recommendation: None

Legislation, Regulations, and Other Program Elements: Satisfactory but needs improvement.
Recommendation: None

Overall finding: Adequate to protect public health and safety and compatible with the NRC's program.

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 procedure SA-103, "Reviewing the Common Performance Indicator: Technical Staffing and Training," and evaluated New Mexico'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) 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

The New Mexico Agreement State Program is comprised of a Bureau Chief, a Program Manager, nine technical staff members and three administrative staff members, which is equivalent to approximately 5.8 full-time equivalent (FTE). Of the nine technical staff, eight perform inspections and one performs both licensing and inspection activities. There are no vacancies at this time. At the time of the 2017 IMPEP review, there were three vacant technical staff positions and during this review period two more technical staff members left the program. These five positions were vacant from 10 to 24 months due to a combination of challenges in finding qualified applicants and a lengthy hiring process.

The New Mexico Agreement State Program has a training and qualification program compatible with the NRC's IMC 1248. The team determined that qualified licensing and inspection staff are completing at least 24 hours of refresher training every 2 years. At the time of the review, four technical staff were in the process of becoming fully qualified inspectors.

The 2017 IMPEP report listed a recommendation for improved program performance for this indicator. The team recommended that the State continue to implement a well-conceived and balanced staffing strategy to ensure the program's continued adequacy and compatibility. The team determined that although the New Mexico Agreement State Program is fully staffed, a well-conceived and balanced staffing strategy has not been implemented to ensure the program's continued adequacy and compatibility. The team noted that there has been only one qualified license reviewer performing licensing actions since 2013. Even though the New Mexico Agreement State Program is fully staffed, there is a staffing imbalance since eight of the nine staff are qualified solely to perform inspections and one staff person is qualified to perform both licensing and inspection activities. New Mexico management stated that it plans to qualify one additional staff person to perform licensing actions now that the program is fully staffed. The team concluded that this recommendation should remain open until such time as a balanced staffing strategy is fully implemented throughout the review

period. Additionally, this recommendation should remain open until no downgraded performance is seen in licensing and inspection activities associated with an imbalance in staffing.

The team noted that there were no impacts on this indicator related to the COVID-19 Public Health Emergency (PHE). Although the PHE has reduced the number of in-person training opportunities, there has been no adverse impacts to the qualification process. Staff continue to enroll in NRC classes, when available.

c. Evaluation

The team determined that during the review period New Mexico met the performance indicator objectives listed in Section 3.1.a, except for:

- A well-conceived and balanced staffing strategy was not implemented throughout the review period, and
- There was not a balance in staffing of the licensing and inspection programs.

Specifically, the team determined that although the New Mexico Agreement State Program is fully staffed, a single point failure exists in that there is only one technical staff member performing licensing actions. This staffing arrangement has been in place since 2013. Additionally, program performance impacts were seen in the indicator Technical Quality of Licensing Actions that are in part related to there being only one license reviewer and no ability for there to be a peer review process in place. Now that the New Mexico Agreement State Program is fully staffed, management has committed to qualifying an additional technical staff person to perform licensing actions. Therefore, the team determined that the recommendation from the 2017 IMPEP review should remain open.

The team discussed findings of satisfactory and satisfactory, but needs improvement for this indicator. Specifically, the team noted that MD 5.6 states in Section III.B.2 that “Consideration should be given to a finding of satisfactory but needs improvement when a review demonstrates the presence of one or more of the following conditions.” Under Section III.B. the team determined that the New Mexico Agreement State Program met item 2.(a) “Insufficient qualified staff to implement the regulatory program and/or vacant positions not readily filled, that result in performance issues in one other indicator.” The team determined that performance issues seen under the indicator Technical Quality of Licensing Actions were due, in part, to only a single qualified reviewer performing licensing actions. However, the team noted the same staffing situation (only having one license reviewer) existed in the previous review period and additionally, the vacant staff positions noted during the previous IMPEP review had all been filled. The team determined that this indicator had similar and in the case of vacant positions improved performance during the current review period. Therefore, the team determined that a recommendation of satisfactory but needs improvement was not warranted.

Based on the criteria in MD 5.6, the team recommends that New Mexico’s performance with respect to the indicator, Technical Staffing and Training, be found satisfactory.

d. MRB Chair’s Determination

The final report will present the MRB Chair’s determination regarding this indicator.

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 State Agreements procedure SA-101, "Reviewing the Common Performance Indicator: Status of the Materials Inspection Program," and evaluated New Mexico'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

Over the review period, the New Mexico Agreement State Program performed 171 Priority 1, 2, 3 and initial inspections, of which 148 were routine inspections and 23 were initial inspections. Nine of those inspections were performed overdue: one routine inspection of an industrial radiography licensee and eight initial inspections. The overdue inspections were performed between a few days to a few months overdue. The team noted that the overdue initial inspections were a result of database errors and the tracking of new licenses following initial issuance. Overall, the team determined that the New Mexico Agreement State Program conducted 4.3 percent of Priority 1, 2, 3, and initial inspections overdue during the review period.

Inspection frequencies are either the same as or more frequent than the NRC's for similar license types. A sampling of 20 inspection reports found that all the inspection findings were communicated to the licensees within 30 days after the inspection exit.

The team determined that for the first part of the review period New Mexico implemented a reciprocity inspection procedure equivalent to the NRC's IMC 1220. Then, in September 2021, the New Mexico Agreement State Program implemented a revised reciprocity inspection procedure similar to that of the NRC's as noted in the April 2020 revision to IMC 2800. Per State and Tribal Communications (STC) Letter 20-082, "The IMPEP review team should evaluate the Agreement State's reciprocity inspection

program for the entire review period based on the procedure (IMC 1220 or revised IMC 2800) implemented with the least restrictive criteria.” The team reviewed both of the reciprocity procedures and determined that the procedure implemented by New Mexico in September 2021 was the less restrictive of the two. Therefore, the team reviewed the reciprocity inspections completed throughout the review period against the procedure issued in September 2021 and determined that inspections were performed following that procedure and using a risk-informed approach. The team noted that there were no impacts to this indicator related to the COVID-19 PHE.

c. Evaluation

The team determined that, except as noted below during the review period, New Mexico met the performance indicator objectives listed in Section 3.2.a.

- Eight of twenty-three initial inspections were not performed within 12 months of license issuance.

The team identified that when the New Mexico Agreement State Program entered pre-licensing visits into its database, the database did not allow for labeling/tracking of an initial inspection and schedule the inspection in accordance with its assigned inspection frequency. This caused some initial inspections to not be properly identified as initial inspections and caused the inspections to be performed in greater than 12 months after license issuance.

Based on the above, the team is providing the following recommendation for improved program performance:

- The team recommends that the New Mexico Agreement State Program implement a method to track initial inspections to ensure that initial inspections are completed in accordance with the guidance outlined in the NRC’s IMC 2800.

Based on the criteria in MD 5.6, the team recommended that New Mexico’s performance with respect to the indicator, “Status of Materials Inspection Program,” be found satisfactory.

d. MRB Chair’s Determination

The final report will present the MRB Chair’s determination regarding this indicator.

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 State Agreements procedure SA-102, “Reviewing the Common Performance Indicator: Technical Quality of Inspections,” and evaluated New Mexico’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 20 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 seven of New Mexico's current and former inspectors and covered medical, industrial, commercial, academic, research, and service provider licenses. Based on its review of inspection documentation, the team found that all inspections were well documented, and inspection findings were consistent with inspection procedures and regulatory requirements.

A team member accompanied four inspectors on August 23-26, 2021. The inspector accompaniments were conducted in-person. The team found that inspectors were well-prepared and thorough, and assessed the impact of licensed activities on health, safety, and security. During interviews of licensee staff, inspectors used open ended questions, and were able to develop a basis of confidence that radioactive materials were being used safely and securely. Any findings observed were brought to the user's attention at the time of the inspection and again to the licensee's management during the inspection exit meeting. All findings and conclusions were well-founded and documented. The inspector accompaniments are identified in Appendix B.

The team found that all supervisory accompaniments were performed at least annually for all qualified inspectors during each year of the review period. The team determined that the New Mexico Agreement State Program has an adequate supply of properly calibrated radiation detection equipment to support the inspection program. Calibrations are performed annually. In all inspection records reviewed, the team found that surveys had been performed with properly calibrated survey equipment.

The team determined that the New Mexico Agreement State Program performed virtual remote inspections for a majority of the inspections that fell within the COVID-19 PHE time frame. Of the 20 inspection reports reviewed by the team, four included review of write-ups for inspections that were performed remotely. The team determined these write-ups were thorough and complete and described what the staff reviewed in order to complete the inspection. The team determined that there were no impacts on this indicator related to the COVID-19 PHE.

c. Evaluation

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

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

3.4 Technical Quality of Licensing Actions

The quality, thoroughness, and timeliness of licensing actions can have a direct bearing on public health, safety, and security. An assessment of licensing procedures, implementation of those procedures, and documentation of communications and associated actions between the New Mexico licensing staff and regulated community is a significant indicator of the overall quality of the licensing program.

a. Scope

The team used the guidance in State Agreements procedure SA-104, "Reviewing the Common Performance Indicator: Technical Quality of Licensing Actions," and evaluated New Mexico'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 *Code of Federal Regulations* (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 risk-significant radioactive materials 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, New Mexico performed 618 radioactive materials licensing actions. The team evaluated 20 of those licensing actions: 2 new applications, 9 amendments, 7 renewals, and 2 terminations. The team evaluated casework which included the following license types and actions: broad scope, gamma irradiator, industrial radiography, medical diagnostic and therapy, mobile medical, nuclear

pharmacy, well logging, and financial assurance. The casework sample represented work from the New Mexico Agreement State Program's only license reviewer.

Licensing actions are tracked using a computer database system. All actions are assigned to a single licensing reviewer who is responsible for the entirety of the review including issuance of deemed timely letters, reviewing the licensee's inspection history, preparation and issuance of deficiency letters, technical reviews, and preparation of a transmittal cover letter listing a description of the changes made to the license. Once the qualified license reviewer has completed the action, it then goes to the Bureau Chief for an administrative review and signature which completes the licensing process. All licenses are issued with a 5-year expiration date.

In reviewing licenses issued by the New Mexico Agreement State Program, the team determined that all amendments and renewals from the initial application forward are tied down under the last condition on the license. This includes applications previously received that applied to licenses that are now expired. The team also determined that the New Mexico Agreement State Program does not require applicants to address all areas of the renewal application using the appropriate NUREG-1556 volume or other appropriate licensing guidance and accepts a renewal application form with the word "same" written in the box requiring an explanation of the current licensee program. Only significant changes are addressed in the renewal application. The team determined that this contributed to historical errors on 4 of 20 licenses reviewed. The team discussed the importance of receiving a complete renewal application with staff and management and highlighted Section 4.4 of NUREG-1556, Volume 20, Revision 1, which provides guidance on processing renewal applications. In order to ensure that a complete review of a renewal package is performed, the team recommends that the New Mexico Agreement State Program perform reviews of renewal applications in accordance with the criteria outlined in Section 4.4 of the NRC's NUREG-1556 Volume 20, Revision 1 or equivalent Agreement State procedure.

The team assessed the implementation of the NRC's "Checklist to Provide a Basis for Confidence that Radioactive Material will be used as Specified on the License" (Pre-Licensing Guidance). Based on the files reviewed, the team determined that the program had implemented and used an older version of the NRC's Pre-Licensing Guidance which was issued on August 9, 2018. However, the team determined that staff was unaware of a revision to the Pre-Licensing Guidance which was issued on January 29, 2019. When the newer version of the guidance was brought to the New Mexico Agreement State Program attention, program management committed to implementing the most current version going forward.

Additionally, the team reviewed the implementation of the Risk Significant Radioactive Material (RSRM) checklist and found that the checklist was not being used. The NRC issued a revised RSRM checklist in 2018. The purpose of this checklist is to:

- Aid license reviewers in determining whether a new applicant or existing licensee is requesting RSRM or requesting the addition of a nationally tracked source,
- Verify whether a new applicant has a thorough understanding of or has implemented the Part 37 Physical Protection Program by conducting an on-site security review, and
- Determine whether a new applicant or existing non-Manufacturing & Distribution service provider licensee is seeking unescorted access to RSRM at clients' facilities and will therefore need to establish an access authorization program.

During the team's review of the 20 selected licensing actions completed over the course of the review period, the team did not identify any misses as a result of not adopting and implementing the most current version of the RSRM checklist. However, the team noted that the checklist is a compatibility category C and by not adopting and implementing the checklist, a potential security risk of RSRM could exist. Additionally, the 2017 IMPEP report included a discussion on the inconsistent use of the RSRM checklist for new licensees. Therefore, the team recommends that the New Mexico Agreement State Program adopt and consistently implement the RSRM checklist for licensing actions that meet the criteria in the applicable guidance. The team determined that there were no impacts on this indicator related to the COVID-19 PHE.

c. Evaluation

The team determined that during the review period New Mexico met the performance indicator objectives listed in Section 3.4.a, except for:

- Reviewers are not consistently following the criteria specified in the NUREG-1556 series or applicable license guidance documents for renewal applications, and
- The revised RSRM checklist was not adopted and implemented during the review period for all applicable licensing actions received.

The team determined that the New Mexico Agreement State Program was not following the NRC's NUREG-1556, Volume 20, Revision 1, when processing renewal applications. This led to renewal applications being incomplete and inconsistent, made it difficult for inspectors to identify the licensee's commitments, and allowed for historical errors to remain on the license after the licensing process. Program management committed to ensuring all areas of the appropriate NUREG-1556 volume(s) are addressed during the processing of renewal applications in order to ensure a complete review of the license renewal package is performed.

Additionally, the team determined that the most recent version of the RSRM checklist had not been adopted and implemented for all licensing actions received. By not adopting and implementing the RSRM checklist, it could pose a potential security risk of RSRM. This issue was also identified in part in the 2017 IMPEP report. Based on the 2021 IMPEP team's findings, program management committed to revising its procedures to include the most current version of the RSRM checklist and to ensure its consistent use.

Based on the above, the team is providing the following two recommendations for improved program performance:

- The team recommends that the New Mexico Agreement State Program perform reviews of renewal applications in accordance with the criteria outlined in Section 4.4 of the NRC's NUREG-1556, Volume 20, Revision 1, or equivalent Agreement State procedure.
- The team recommends that the New Mexico Agreement State Program adopt and consistently implement the RSRM checklist for licensing actions that meet the criteria in the applicable guidance.

In determining the overall rating for this indicator, the team reviewed MD 5.6. Specifically, the team noted that MD 5.6 states in Section III.E.2 that "Consideration should be given to a finding of satisfactory but needs improvement when a review demonstrates the presence of one or more of the following conditions." The team

determined that, as discussed above, the New Mexico Agreement State Program met the following conditions under Section III.E.2 during this review period:

- (a) Evaluation of licensing casework indicates that the licensing actions are not thorough, complete, consistent, and of acceptable technical quality in more than a few, but less than most, of the cases reviewed.
- (g) Reviewers are not consistently following the criteria specified in the NUREG-1556 series, as applicable, and NMSS procedure SA-104 or compatible Agreement State procedures in more than a few, but less than most, of the actions reviewed.

Therefore, based on the IMPEP evaluation criteria in MD 5.6, the team recommends that New Mexico's performance with respect to the indicator, Technical Quality of Licensing Actions, be found satisfactory, but needs improvement.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

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 State Agreements procedure SA-105, "Reviewing the Common Performance Indicator: Technical Quality of Incident and Allegation Activities," and evaluated New Mexico'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 Nuclear Material Events Database (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, six reportable incidents were received by the New Mexico Agreement State Program. The team reviewed all six incidents which included: three

events involving lost/missing radioactive material, two potential overexposures to radiation workers, and a fire involving radioactive material. Additionally, the team selected 10 incidents received by the New Mexico Agreement State Program that were not reported to the NRC to verify that none required additional reporting. The team determined that none of the 10 additional events reviewed required reporting to the NRC.

When an event is reported, it is routed to the staff member who manages the incident program to determine its health and safety significance and then with the assistance of management, together they determine the appropriate response. That response can range anywhere from responding immediately to reviewing the event during the next inspection. Enforcement actions were taken when appropriate. The team also found that the New Mexico Agreement State Program responded to events in accordance with its established procedure.

The team evaluated the reporting of incidents to the NRC's Headquarters Operations Center (HOC). The team found that all six reportable incidents met the criteria for reporting to the HOC. The team determined that two incidents were reported to the HOC within the required timeframe, one incident was reported initially to NMED and then once identified as requiring a report to the HOC was reported approximately one month late, and at the time of the review, the other three incidents had also been reported directly to the NMED database but had not yet been submitted to the HOC and were late at the time of the IMPEP review. The team brought these three events to the New Mexico Agreement State Program's attention and they were immediately sent to the HOC.

During the review period, the New Mexico Agreement State Program received nine allegations. Six allegations were received directly and three were transferred by the NRC. The team evaluated all nine allegations and found that the New Mexico Agreement State Program took prompt and appropriate action in response to the concerns raised. All allegations reviewed were appropriately closed, concerned individuals were notified of any actions taken, and concerned individual's identities were protected whenever possible in accordance with State law. The team noted that there were no impacts to this indicator related to the COVID-19 PHE.

c. Evaluation

The team determined that, except as noted below during the review period, New Mexico met the performance indicator objectives listed in Section 3.5.a.

- Notifications for four of the six incidents were not made to the NRC HOC in the appropriate time frame.

Specifically, the team identified that for four of the six incidents where a HOC notification was required, one incident was reported approximately one month late, and the other three incidents had not been identified as requiring reporting to the NRC's HOC. These four incidents all required reporting within 24 hours. Interviews with the individual managing the incident program noted a general misunderstanding about how reporting certain events to the NMED database was not a substitute for reporting required incidents to the NRC's HOC.

Based on the criteria in MD 5.6, the team recommended that New Mexico's performance with respect to the indicator, "Technical Quality of Incident and Allegation Activities," be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

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. The NRC retains regulatory authority for SS&D Evaluation and Uranium Recovery Programs; and New Mexico has not initiated any LLRW disposal activities as described in Section 4.2 of this report; therefore, only the first non-common performance indicator 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 Web site at the following address: <https://scp.nrc.gov/regtoolbox.html>.

a. Scope

The team used the guidance in State Agreements procedure SA-107, "Reviewing the Non-Common Performance Indicator: Legislation, Regulations, and Other Program Elements," and evaluated New Mexico'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, 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 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

New Mexico became an Agreement State on May 1, 1974. The New Mexico Agreement State Program's current effective statutory authority is contained in the Radiation Protection Act, Title 20 Environmental Protection, Chapter 3, "Radiation Protection." The New Mexico Environment Department is designated as the State's radiation control agency. The team noted that no new legislation affecting the radiation control program was passed during the review period.

The State's administrative rulemaking process normally takes approximately 12 months from drafting to finalizing a rule. The New Mexico Agreement State Program has the authority to issue alternate legally binding requirements, such as license conditions, in lieu of regulations when necessary. The public, the 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, approved, and filed. The team noted that the State's rules and regulations are not subject to "sunset" laws.

During the review period, New Mexico submitted six final regulation amendments and one legally binding requirement to the NRC for a compatibility review. These regulation changes were submitted to address regulation amendments identified as being overdue for adoption during the 2017 IMPEP review.

At the time of this review, the following amendment package was overdue for adoption:

- "Miscellaneous Corrections Parts 19, 20, 30, 32, 37, 40, 61, 70, 71 and 150 80 FR 74974" State adoption by December 31, 2018.

A few weeks prior to the IMPEP review, an attempt was made to electronically submit to the NRC a regulation package containing final rule changes addressing the overdue regulation and also addressing outstanding comments to other rules that had already been adopted. It was determined during the IMPEP review that the regulation package was never received by the NRC. The cause for it not being received was determined to be the size of the attachment. New Mexico Agreement State Program staff and NRC staff are working together to transmit the document for review.

The team reviewed guidance documents that the New Mexico Agreement State Program uses to meet the requirements of other program elements that the NRC has designated as necessary for the maintenance of an adequate and compatible program. These are living documents and changes are made as needed. As discussed in greater detail in Section 3.4, the team determined that the most current versions of the RSRM Checklist and Pre-Licensing Guidance were not adopted within 6 months of issuance. The team noted that there were no impacts on this indicator related to the COVID-19 PHE.

c. Evaluation

The team determined that, except as noted below during the review period, New Mexico met the performance indicator objectives listed in Section 4.1.a.

- Regulation changes associated with RATS ID 2015-5 were adopted in a time frame greater than 3 years after the effective date of the NRC's regulation.
- Other program elements as defined in SA-200 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. Specifically, the most current versions of the Pre-Licensing Guidance and the RSRM Checklist were not adopted within six months of issuance.

As noted above, New Mexico submitted final regulation changes associated with RATS ID 2015-5 in September 2021. At the time of the IMPEP review, it was determined that this submittal was never received by the NRC due to the size of the attachment. The package was then resubmitted and received by the NRC in October 2021 for a compatibility review. Considering the first submittal attempt, the team determined that New Mexico adopted equivalent regulations to the changes made in RATS ID 2015-5 approximately two and half years after the adoption date (approximately five and a half years after the NRC's effective date). Additionally, the team determined that the most current versions of the NRC's Pre-Licensing Guidance and RSRM Checklist had not been adopted and implemented by the New Mexico Agreement State Program within six months of issuance by the NRC.

Based on the criteria in MD 5.6, the team recommends that New Mexico's performance with respect to the indicator, Legislation, Regulations, and Other Program Elements, be found satisfactory.

d. MRB Chair's Determination

The final report will present the MRB Chair's determination regarding this indicator.

4.2 Low-level Radioactive Waste 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. Although the New Mexico Agreement State Program has LLRW disposal authority, NRC has not required States to have a program for licensing a LLRW 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, they are expected to put in place a regulatory program which will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in New Mexico. Accordingly, the team did not review this indicator.

5.0 SUMMARY

New Mexico's performance was found to be satisfactory for five out of six performance indicators reviewed and satisfactory, but needs improvement for the performance indicator Technical Quality of Licensing Actions.

The team made three new recommendations for improved program performance and determined that the previous recommendation from the 2017 IMPEP review remain open.

1. The team recommends that the New Mexico Agreement State Program continue to implement a well-conceived and balanced staffing strategy to ensure the program's continued adequacy and compatibility (Section 3.1).
2. The team recommends that New Mexico Agreement State Program implement a method to track initial inspections to ensure that initial inspections are completed in accordance with the guidance outlined in the NRC's IMC 2800. (Section 3.2)
3. The team recommends that the New Mexico Agreement State Program perform reviews of renewal applications in accordance with the criteria outlined in Section 4.4 of the NRC's NUREG-1556, Volume 20, Revision 1, or equivalent Agreement State procedure. (Section 3.4)
4. The team recommends that the New Mexico Agreement State Program adopt and consistently implement the RSRM checklist for licensing actions that meet the criteria in the applicable guidance. (Section 3.4)

Accordingly, the team recommends that New Mexico be found adequate to protect public health and safety and compatible with the NRC's program. Based on the results of the current IMPEP review, the team recommends that two periodic meetings take place approximately 18 and 36 months after the IMPEP review and that the next full IMPEP review take place in approximately 4 years.

LIST OF APPENDICES

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| Appendix A | IMPEP Review Team Members |
| Appendix B | Inspector Accompaniments |

APPENDIX A

IMPEP REVIEW TEAM MEMBERS

| Name | Areas of Responsibility |
|-------------------------------|--|
| Monica Ford, Region I | Team Leader Technical Quality of Inspections Inspector Accompaniments |
| Darren Piccirillo, Region III | Team Leader in Training Technical Staffing and Training Legislation, Regulations, and Other Program Elements |
| Randy Erickson, Region IV | Status of Materials Inspection Program Technical Quality of Incident and Allegation Activities |
| Stuart Jordan, Iowa | Technical Quality of Licensing Actions |

APPENDIX B

INSPECTOR ACCOMPANIMENTS

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

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| Accompaniment No.: 1 | License No.: WL 034-23 |
| License Type: Well Logging | Priority: 3 |
| Inspection Date: August 23, 2021 | Inspector's initials: CS |

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| Accompaniment No.: 2 | License No.: IR 399-33 |
| License Type: Industrial Radiography | Priority: 1 |
| Inspection Date: August 24, 2021 | Inspector's initials: JH |

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| Accompaniment No.: 3 | License No.: MD 450-14 |
| License Type: Nuclear Medicine | Priority: 5 |
| Inspection Date: August 25, 2021 | Inspector's initials: RB |

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|----------------------------------|--------------------------|
| Accompaniment No.: 4 | License No.: MI 423-22 |
| License Type: HDR | Priority: 2 |
| Inspection Date: August 26, 2021 | Inspector's initials: VD |