

April 11, 2012

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

FROM: Mark A. Satorius, Director */RA/*
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 2011

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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OFFICE	FSME/MSSA	FSME/MSSA	FSME/MSSA	FSME/MSSA
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DATE	04/5/12	04/11/12		

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

CALENDAR YEAR 2011

The U.S. Nuclear Regulatory Commission (NRC) uses the Integrated Materials Performance Evaluation Program (IMPEP) to periodically review 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 NRC's program. The frequency of IMPEP reviews for a particular program range from 1-5 years, based on the program's performance. All reviews are conducted in accordance with NRC Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated February 26, 2004. IMPEP reviews are conducted by teams of NRC and Agreement State staff members. IMPEP teams use the established criteria in MD 5.6, guidance documents maintained by the Office of Federal and State Materials and Environmental Management Programs (FSME), and skills and knowledge acquired at a 2-day training program for IMPEP team members to effectively assess each program's adequacy to protect public health and safety and each Agreement State program's compatibility with NRC's program. NRC staff also conduct periodic meetings with Agreement States between IMPEP reviews. Periodic meetings were created to help NRC Headquarters, the NRC Regions, and the Agreement States remain knowledgeable of the status of each other's respective programs.

Attachment 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of March 14, 2012. Regarding the adequacy provision of Section 274b. of the Atomic Energy Act (the Act) of 1954, as amended, 27 of the 37 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arizona, Arkansas, Georgia, Kentucky, Massachusetts, New York, North Dakota, Oregon, Rhode Island, and Tennessee have a program finding of "adequate to protect public health and safety, but needs improvement." Regarding the compatibility provision of Section 274b. of the Act, 35 of the 37 Agreement State programs have a program finding of "compatible with NRC's program." California and New York have a program finding of "not compatible with NRC's program." All NRC radioactive 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, 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) 2011.

When programmatic weaknesses exist in an Agreement State program, 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. Under Heightened Oversight, a State is required to develop a Program Improvement Plan (Plan) to address IMPEP findings and recommendations. The Plan is submitted to NRC for approval prior to implementation. A State on Heightened Oversight must also submit status reports prior to bimonthly conference calls conducted by NRC staff with State program managers and staff to discuss program status. For Monitoring, a State's managers and staff must participate in quarterly calls with NRC staff to discuss program status. The decision to put an Agreement

Enclosure

State program on either Monitoring or Heightened Oversight is done at the direction of the Management Review Board (MRB). The results of all IMPEP reviews and periodic meetings are presented to the MRB for its deliberation of the findings. An Agreement State program can be placed on Heightened Oversight or Monitoring as a result of an IMPEP review or periodic meeting. Currently, three States are on Heightened Oversight and five States are on Monitoring. Discussions of each of the States on Heightened Oversight and Monitoring are provided in the corresponding sections below. A summary of recent activities related to States on Heightened Oversight or Monitoring is presented in Attachment 4. Also provided is a discussion for Massachusetts, Oregon, and Tennessee. Currently these Agreement States are not subject to Heightened Oversight or Monitoring but have a finding of "adequate, but needs improvement."

STATES ON HEIGHTENED OVERSIGHT

Arizona:

The Arizona Agreement State Program has been on Heightened Oversight since 2008. The 2008 IMPEP review revealed a number of performance weaknesses. The Program has been challenged by budget and staffing issues since the early 2000s. A followup IMPEP review conducted in 2010 showed some program improvements. However, an additional loss of staff, overdue inspections, and licensing quality remained a concern. A February 2011 Periodic meeting indicated the Program continues to struggle with staffing and budgeting. Recently, the Program reported it is keeping up with work and a key management vacancy was filled. The Program was fully funded in FY2011 and for FY 2012. A full IMPEP was conducted in March 2012. Final results are pending an MRB deliberation.

New York:

The New York Agreement State Program has been on Heightened Oversight since 2005 due to a large number of overdue regulations. The New York Agreement State Program was found adequate, but needs improvement, and not compatible with NRC's program following the June 6- 16, 2011, IMPEP review. Findings from the June 2011 IMPEP review showed no improvement with the adoption of regulations. In addition, the Program was downgraded in three performance indicators from the 2006 IMPEP. The New York Agreement State Program updated its Program Improvement Plan and has undergone the first Heightened Oversight call since the MRB meeting for the 2011 IMPEP. During the MRB, New York requested NRC send a letter of support to the Governor which was subsequently sent on February 13, 2012, from the Chairman. New York will have a periodic meeting in June 2012 and a full IMPEP review in June 2013.

North Dakota:

The North Dakota Agreement State Program was placed on Heightened Oversight following the April 2011 IMPEP review. The Program experienced staff turnover twice during the IMPEP review period. The IMPEP review identified a number of performance weaknesses. The Program developed and implemented a Program Improvement Plan. Bimonthly Heightened Oversight calls indicate progress is being made to address the performance concerns and recommendations. North Dakota has engaged Minnesota and NRC for support and training. North Dakota will have a periodic meeting in 2012 and follow-up IMPEP in 2013.

STATES ON MONITORING

Arkansas:

Following the April 2011 followup IMPEP, the Arkansas Agreement State Program was removed from Heightened Oversight and put on Monitoring. While some performance weaknesses were still present in the technical quality of licensing actions, the Program made significant improvements with staffing and training and in the status of the materials inspection program. Arkansas will have a periodic meeting in 2013 and a full IMPEP in FY 2014.

California:

The California Agreement State Program was removed from Heightened Oversight and placed on Monitoring in June 2008. The Program corrected a number of performance weaknesses. However, staff found that while the Program made progress in addressing overdue regulations, the Program still had several to complete. This situation was unchanged during the Program's most recent IMPEP conducted in October 2011. The Program was found adequate to protect public health and safety, and not compatible with NRC. The Program committed to apply an additional resource to the area of regulation development to update its plan for completing overdue regulatory packages to include details and milestones necessary to demonstrate sustained performance with regard to compatibility requirements. The review team recommended and the MRB agreed that the California Program remain on Monitoring. California will have a periodic meeting in 2013 and a full IMPEP in FY 2015.

Georgia:

The Georgia Agreement State Program was placed on Monitoring following the September 2008 IMPEP review. Staff noted improvements in Georgia's performance during Periodic meetings held in 2009, 2010, and 2011. However, there has not been a sufficient period of sustained performance to warrant recommending that the program be taken off of Monitoring. The next full IMPEP review of the Georgia Agreement State Program will take place in October 2012.

Kentucky:

Kentucky Agreement State Program was placed on Monitoring in 2005 following a periodic meeting primarily for staffing shortages and declining performance. The Program continues to make noted improvements in all performance areas. The next full IMPEP review of the Kentucky Agreement State Program will take place in FY 2012.

Rhode Island:

Following the October 24-28, 2011, IMPEP, the Rhode Island Agreement State Program was placed on Monitoring. The IMPEP review revealed a number of performance weaknesses with inspections and staffing and training. Rhode Island will have a periodic meeting in 2012 and a full IMPEP in FY 2015.

STATES REMOVED FROM ADDITIONAL REVIEW PROCESS

Massachusetts:

The Massachusetts Agreement State Program was placed on Monitoring following its 2010 IMPEP review. The review team noted weaknesses in management oversight of the Radiation Control Program which resulted in persistent staffing vacancies, overdue inspections, and repeat recommendations from the 2006 IMPEP review. A Periodic meeting was held in 2011 at which time staff found that the Commonwealth had made significant progress in addressing the issues of management oversight and staffing vacancies. Monitoring was discontinued. The next periodic meeting is planned for 2013 and the next full IMPEP will take place in FY 2014.

Oregon:

The Oregon Agreement State Program was removed from Heightened Oversight and was placed on Monitoring following the 2008 follow-up IMPEP review and remained on Monitoring following the 2009 IMPEP. At the periodic meeting in 2010, staff found the Program made progress in correcting performance weaknesses and addressing recommendations made during the 2009 IMPEP. In early 2011, Oregon was taken off monitoring. The next full IMPEP will take place in FY 2013.

STATE NOT SUBJECT TO ADDITIONAL REVIEW PROCESS

Tennessee:

The Tennessee Agreement State Program has an overall program finding of “adequate to protect public health and safety, but needs improvement.” However, it is not subject to Heightened Oversight or Monitoring. At the July 15, 2008, MRB meeting, the Tennessee Agreement State Program was found “adequate to protect public health and safety, but needs improvement” due to performance issues with staffing and training, timeliness of adoption of compatibility-required regulatory amendments, and quality of sealed source and device evaluations toward the beginning of the review period. Tennessee was able to resolve or had a plan in place to resolve the identified performance issues; therefore, the review team believed, and the MRB agreed, that the performance issues did not warrant additional oversight at that time. A periodic meeting was held in June 2010 and the staff found that the State had made considerable progress in addressing all of the recommendations made during the previous IMPEP. The next full IMPEP is planned for April 2012.

TRENDING ANALYSIS

Budget and staffing issues have become the norm for many Agreement State programs over the last several years. NRC staff continues to closely monitor the effects of budget shortfalls and budget cuts in these States. NRC issued letters of support to three States (Arkansas, New Mexico, New York) to draw State management attention to staffing retention issues that could potentially affect the performance of the program in the future. At the request of the South Carolina State legislators, NRC staff testified at a South Carolina budget hearing in an effort to support the South Carolina Agreement State program’s request for license fee increases. In

addition, NRC issued a letter of support to Utah for reauthorization of Utah's radiation control act. It should be noted that the Utah radiation control act is now reauthorized without a repeal date.

For the period of 2005 through 2011, there has been a gradual increase in the number of state programs on Heightened Oversight and/or Monitoring, from six to eight. Staff will continue to monitor the significance of this trend.

IMPEP reviews continued to confirm that all Agreement State programs put health and safety first and foremost. Programs are reprioritizing and managing their workload to overcome staffing or budgeting constraints to the best of their ability. IMPEP reviews confirmed that the Agreement States continue to implement high-priority programmatic changes directed by NRC.

CURRENT IMPEP INITIATIVES

In a dynamic regulatory environment, IMPEP must adapt to new regulatory changes to continue an effective review of NRC Regional and Agreement State radioactive materials programs. The following details some of the ongoing initiatives in IMPEP:

Staff continues to develop and implement the recommendations from the self-assessment of the IMPEP program conducted in 2010. Several recommendations are dependent upon the update of MD 5.6. The MD 5.6 is currently undergoing revision by an NRC-Agreement State working group.

Staff actively reviews and revises the agency's procedures that govern the performance of IMPEP reviews to ensure that the procedures are up to date and reflect current practices. In 2011, staff issued six FSME Procedures, and sent out two FSME Procedures in draft for Agreement State review and comment.

Staff is currently conducting an integrated assessment of Agreement State performance and program health. With this initiative staff hopes to: 1) identify factors that might have a positive correlation with program performance and health; 2) determine actions NRC might take to improve program performance and health; 3) explore opportunities for improvement of the IMPEP process.

SUMMARY

NRC and the Agreement States continue to work in cooperation to achieve the goals of the National Materials program. Inclusion of the Agreement States in the IMPEP review process enables a productive exchange of information. NRC and the Agreement States both benefit from the IMPEP program's blending of State and Federal resources. IMPEP results of the most recent review indicate that 27 regulatory programs are adequate to protect public health, safety, and environment, and 10 are adequate, but needing improvement. In addition to the cooperation demonstrated through the IMPEP process, NRC and the Agreement States continue to work together on a number of issues. Staff continually seeks and receives

Agreement State involvement in improving the nationwide protection of health, safety, security and the environment. The Agreement States routinely contribute resources to NRC working groups on issues such as rulemaking, updating guidance, and revising policy. The Agreement States have provided significant input, and will continue to play an instrumental role, to the Agency's actions in ensuring consistent, nationwide implementation of a program to protect the public against unauthorized or malicious use of radioactive materials while allowing the beneficial uses to continue.

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 2011
4. Heightened Oversight and Monitoring Chart

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of March 14, 2012)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2010	adequate	compatible
Arizona	2010	adequate, but needs improvement	compatible
Arkansas	2011	adequate, but needs improvement	compatible
California	2012	adequate	not compatible
Colorado	2010	adequate	compatible
Florida	2011	adequate	compatible
Georgia	2008	adequate, but needs improvement	compatible
Illinois	2009	adequate	compatible
Iowa	2007	adequate	compatible
Kansas	2010	adequate	compatible
Kentucky	2008	adequate, but needs improvement	compatible
Louisiana	2008	adequate	compatible
Maine	2011	adequate	compatible
Maryland	2011	adequate	compatible
Massachusetts	2010	adequate, but needs improvement	compatible
Minnesota	2012	adequate	compatible
Mississippi	2009	adequate	compatible
Nebraska	2011	adequate	compatible
Nevada	2009	adequate	compatible
New Hampshire	2008	adequate	compatible
New Jersey	2011	adequate	compatible
New Mexico	2009	adequate	compatible
New York	2011	adequate, but needs improvement	not compatible
North Carolina	2009	adequate	compatible
North Dakota	2011	adequate, but needs improvement	compatible
Ohio	2009	adequate	compatible
Oklahoma	2006	adequate	compatible

Oregon	2009	adequate, but needs improvement	compatible
Pennsylvania	2010	adequate	compatible
Rhode Island	2012	adequate, but needs improvement	compatible
South Carolina	2007	adequate	compatible
Tennessee	2008	adequate, but needs improvement	compatible
Texas	2010	adequate	compatible
Utah	2011	adequate	compatible
Virginia	2011	adequate	compatible
Washington	2008	adequate	compatible
Wisconsin	2009	adequate	compatible

SUMMARY OF NRC RADIOACTIVE MATERIALS PROGRAMS' ADEQUACY STATUSES
(As of March 14, 2012))

REGION	REVIEW YEAR	ADEQUACY FINDING
HQ SS&D	2010	adequate
Region I	2010	adequate
Region III	2007	adequate
Region IV	2009	adequate

**IMPEP REPORT TRACKING
FISCAL YEAR 2011**

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
Nebraska ¹	10/10	108
Virginia	11/10	87
New Jersey	3/11	90
Florida	3/11	104
Arkansas (followup)	4/11	102
North Dakota	4/11	103
Maine	5/11	104
New York ²	6/11	166
Utah	7/11	103
Maryland ³	8/11	118

- ¹ MRB meeting was scheduled after the target date to accommodate all essential participants' schedules, thereby affecting issuance of the final report.
- ² MRB meeting was rescheduled beyond the 74 day mark to accommodate the State's request.
- ³ MRB meeting was scheduled after the target date to accommodate all essential participants' schedules, thereby affecting issuance of the final report.

HEIGHTENED OVERSIGHT AND MONITORING CHART

(As of March 14, 2012)

State	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
HEIGHTENED OVERSIGHT				
Arizona	3/29-4/1/10 (Followup)	Bimonthly Call 1/10/12	IMPEP 3/12	<ol style="list-style-type: none"> 1. Bimonthly calls 2. Status Reports due 2 weeks prior to calls 3. Next IMPEP: FY 2012
New York 6/6-16/11	6/6-16/11 (IMPEP)	Bimonthly Call 1/26/2012	Bimonthly Call 3/12	<ol style="list-style-type: none"> 1. Bimonthly calls 2. Status Reports due no later than 5 days prior to calls 3. Next IMPEP: FY 2013
North Dakota	4/4-8/11	Bimonthly Calls 1/24/12	Periodic meeting 3/8/12	<ol style="list-style-type: none"> 1. Bimonthly calls 2. Status Reports due 2 weeks prior to calls 3. Next IMPEP: FY 2013
MONITORING				
Arkansas	4/5-8/11 (Followup)	Quarterly Call 1/18/12	Quarterly Call 4/24/12	<ol style="list-style-type: none"> 1. Quarterly calls 3. Next IMPEP: FY 2014
California	10/17-21/11	MRB 1/5/12	Quarterly Call 4/26/12	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY 2015
Georgia	9/22-26/08	Quarterly Call 11/15/11	Quarterly Call 2/22/12	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY2013 (October 2012)
Kentucky	7/28-8/1/08	Quarterly Call 11/9/11	Quarterly Call 2/29/12	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY2012 (June 2012)
Rhode Island	10/24-28/11	MRB 1/17/12	Quarterly Call 4/12	<ol style="list-style-type: none"> 1. Quarterly calls 2. Next IMPEP: FY2016 (October 2015)