

(SP-99-040, June 1999, Program, SA-107)
DATED: JUNE 17, 1999

SIGNED BY: PAUL H. LOHAUS

ALL AGREEMENT STATES
MINNESOTA, OHIO, OKLAHOMA, PENNSYLVANIA, AND WISCONSIN

**PROGRAM MANAGEMENT INFORMATION: DRAFT OSP PROCEDURE SA-107,
“REVIEWING NON-COMMON PERFORMANCE INDICATOR #1, LEGISLATION AND
PROGRAM ELEMENTS REQUIRED FOR COMPATIBILITY” (SP-99-040)**

Enclosed for your review and comment is the draft OSP Procedure SA-107, “Reviewing Non-Common Performance Indicator #1, Legislation and Program Elements Required for Compatibility.” This document has been drafted to give formal guidance for reviewing this indicator during Agreement State IMPEP reviews. We would appreciate receiving your comments within one month of receipt of this letter.

This information request has been approved by OMB 3150-0029, expiration 04/30/01. The estimated burden per response to comply with this voluntary collection request is 6 hour(s). Forward any comments regarding the burden estimate to the Information and Records Management Branch (T-6F33), U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, and to the Paperwork Reduction Project (3150-0029), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.

If you have any questions regarding this correspondence, please contact me or the individual named below:

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Paul H. Lohaus, Director
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Enclosure:
As stated



OSP Procedure Approval

Reviewing Non-Common Performance Indicator #1 Legislation and Program Elements Required for Compatibility - SA-107

Issue Date:

Expiration Date:

Paul H. Lohaus
Director, OSP

Date:

Deputy Director, OSP

Date:

Lance J. Rakovan
Procedure Contact, OSP

Date:

NOTE

The OSP Director's Secretary is responsible for the maintenance of this master copy document as part of the OSP Procedure Manual. Any changes to the procedure will be the responsibility of the OSP Procedure Contact. Copies of OSP procedures will be distributed for information.

	Procedure Title: <i>Reviewing Non-Common Performance Indicator #1, Legislation and Program Elements Required for Compatibility</i> Procedure Number: SA-107	Page: 1 of 4 Issue Date:
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I. INTRODUCTION

This document describes the procedure for conducting reviews of Agreement States using Non-Common Performance Indicator #1, Legislation and Program Elements Required for Compatibility [NRC Management Directive 5.6, “Integrated Materials Performance Evaluation Program” (IMPEP)].

II. OBJECTIVE

To ensure that an Agreement State program does not create any conflicts, gaps, or disruptive duplication in the collective national effort to regulate materials under the Atomic Energy Act.

III. BACKGROUND

For Agreement State program reviews, an assessment of both adequacy and compatibility is necessary to ensure that States are not only adequate to protect public health and safety, but compatible with NRC’s program as well. This indicator is a non-common performance indicator because it is not applicable for NRC Regional offices.

IV. ROLES AND RESPONSIBILITIES

A. Team Leader.

The team leader for the review will determine which team member is assigned lead review responsibility for this performance indicator. The principal reviewer should meet the appropriate requirements specified in Management Directive 5.10, “Formal Qualifications for IMPEP Team Members.”

B. Principal Reviewer.

The principal reviewer for this indicator is responsible for reviewing State legislation and regulations, conducting staff discussions, and documenting information pertinent to the compatibility of the State.

V. GUIDANCE

A. Scope.

1. This procedure specifically excludes regulations addressing only non-Atomic Energy Act materials.
2. Compatibility category designations can be found in OSP Procedure SA-200, *Compatibility Categories and Health & Safety Identification for NRC Regulations and Other Program Elements*. A regulation or program element should only be adopted as necessary to meet the appropriated category.

B. Evaluation Procedures.

1. The principal reviewer should refer to Part III, *Evaluation Criteria*, of Management Directive 5.6, "Integrated Materials Performance Evaluation Program," for specific evaluation criteria.
2. Any changes to State legislation affecting the radiation control program should be reviewed.
3. The status of all regulations adopted in the radiation control program since the last IMPEP review, as well as any regulations currently in the legislative process should be noted.

C. Review Guidelines.

1. The response generated by the Region or State to relevant questions in the IMPEP questionnaire should be used to focus the review.
2. A printout of the State's regulation status from the Regulation Assessment Tracking System (RATS) should be obtained from the Office of State Programs (OSP).

D. Review Details.

For legislation and program elements required for compatibility, the principal reviewer should evaluate and document their review of the following:

1. Legislation that affects the radiation control program, including any legislation that has been passed since the last review, that affects the State's authority to:
 - a. Promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety.
 - b. License, inspect, and enforce legally binding requirements such as regulations and licenses.
2. State statutes are consistent with Federal statutes, as appropriate.
3. The State has adopted legal binding requirements, regulations, and other program elements in accordance with Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs," and the current revisions of OSP Procedures SA-200, *Compatibility Categories and Health & Safety Identification for NRC Regulations and Other Program Elements*, and SA-201, *Reviewing State Regulations*.
4. The State has existing legally enforceable measures as generally applicable rules, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation or agreement material.
5. The State's administrative rulemaking process allows for the adoption of regulations in an appropriate amount of time and includes sufficient period(s) for public comment.
6. All regulations required for purposes of compatibility or health and safety are 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 NRC's final rule. See OSP's Chronology of Amendments for a list of NRC regulation amendments including the NRC effective date. Use the examples in Appendix A as a sample format for listing regulation amendments in IMPEP reports.
7. The status of any regulations currently in the rulemaking process.

8. There is sufficient FTE in the program dedicated to regulation adoption and oversight.
 9. Regulation adoption is completed following the guidance in OSP Procedure SA-201, *Reviewing State Regulations*. Specifically, draft rules are sent to OSP for review and comment.
 10. Other program elements that have been designated as necessary for maintenance of an adequate and compatible program are adopted and implemented within 6 months following NRC designation.
- E. Discussion of Findings with Region or State.

The reviewer should follow the guidance given in OSP Procedure SA-100, *Conducting Integrated Materials Performance Evaluation Program (IMPEP) Reviews*, for discussion of technical findings with reviewers, supervisors, and management.

VI. APPENDICES

- A. Sample List of Regulations for Adoption by Agreement States.

VII. REFERENCES

1. [NRC Management Directive 5.6, "Integrated Materials Performance Evaluation Program."](#)
2. [Management Directive 5.10, "Formal Qualifications for IMPEP Team Members."](#)
3. [Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs."](#)
4. [OSP Procedure SA-200, *Compatibility Categories and Health & Safety Identification for NRC Regulations and Other Program Elements*.](#)
5. [OSP Procedure SA-201, *Reviewing State Regulations*.](#)
6. [OSP Procedure SA-100, *Conducting Integrated Materials Performance Evaluation Program \(IMPEP\) Reviews*.](#)

Appendix A

Sample List of Regulations for Adoption by Agreement States

- “Emergency Planning Rule,” 10 CFR Parts 30, 40, and 70 amendments (54 FR 14051) that became effective on April 7, 1990.
- “Standards for Protection Against Radiation,” 10 CFR Part 20 amendment (56 FR 23360) that became effective June 20, 1991. The Agreement States were expected to promulgate their regulations no later than January 1, 1994.
- “Safety Requirements for Radiographic Equipment,” 10 CFR Part 34 amendment (55 FR 843) that became effective January 10, 1991.
- “Notification of Incidents,” 10 CFR Parts 20, 30, 31, 34, 39, 40, and 70 amendments (56 FR 64980) that became effective on October 15, 1991.
- “Quality Management Program and Misadministrations,” 10 CFR Part 35 amendment (56 FR 34104) that became effective January 27, 1992.
- “Licensing and Radiation Safety Requirements for Irradiators,” 10 CFR Part 36 amendment (58 FR 7715) that became effective July 1, 1993.
- “Definition of Land Disposal and Waste Site QA Program,” 10 CFR Part 61 amendment (58 FR 33886) that became effective July 22, 1993.
- “Decommissioning Recordkeeping, and License Termination: Documentation Additions,” 10 CFR Parts 30, 40, 70, and 72 amendments (58 FR 39628) that became effective on October 25, 1993.
- “Uranium Mill Tailings: Conforming to EPA Standards,” 10 CFR Part 40 amendment (59 FR 28220) that became effective July 1, 1994.
- “Timeliness in Decommissioning of Materials Facilities,” 10 CFR Parts 30, 40, and 70 amendments (59 FR 36026) that became effective August 15, 1994.
- “Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use,” 10 CFR Parts 30, 32, and 35 amendments (59 FR 61767 and 65243) that became effective January 1, 1995.
- “Frequency of Medical Examinations for Use of Respiratory Protection Equipment,” 10 CFR Part 20 amendment (60 FR 7900) that became effective March 13, 1995.

Appendix A (Continued)

- “Low-Level Waste Shipment Manifest Information and Reporting,” 10 CFR Parts 20 and 61 amendments (60 FR 15649 and 25983) that became effective March 1, 1998. The Agreement States were expected to promulgate their regulations no later than March 1, 1998 so that NRC and the State would require this national system to be effective at the same time.
- “Performance Requirements for Radiography Equipment,” 10 CFR Part 34 amendment (60 FR 28323) that became effective June 30, 1995.
- "Radiation Protection Requirements: Amended Definitions and Criteria," 10 CFR Parts 19 and 20 amendments (60 FR 36038) that became effective August 14, 1995.
- “Medical Administration of Radiation and Radioactive Materials,” 10 CFR Parts 20 and 35 amendments (60 FR 48623) that became effective October 20, 1995.
- "Clarification of Decommissioning Funding Requirements," 10 CFR Parts 30, 40, and 70 amendments (60 FR 38235) that became effective November 24, 1995.
- "Compatibility with the International Atomic Energy Agency," 10 CFR Part 71 amendment (60 FR 50248) that became effective April 1, 1996.
- “Termination or Transfer of Licensed Activities: Record Keeping Requirements,” 10 CFR Parts 20, 30, 40, 61, and 70 amendments (61 FR 24669) that became effective June 17, 1996.
- “Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act,” 10 CFR Part 20 amendment (61 FR 65119) that became effective January 9, 1997.
- “Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State,” 10 CFR Part 150 amendment (62 FR 1662) that became effective February 27, 1997.
- “Criteria for the Release of Individuals Administered Radioactive Material,” 10 CFR Parts 20 and 35 amendments (62 FR 4120) that became effective May 29, 1997.
- “Licenses for Industrial Radiography and Radiation Safety - Requirements for Industrial Radiography Operations,” 10 CFR Parts 30, 34, 71, and 150 amendments (62 FR 28947) that became effective June 27, 1997.
- “Radiological Criteria for License Termination,” 10 CFR Parts 20, 30, 40, and 70 amendments (62 FR 39057) that became effective August 20, 1997.

Appendix A (Continued)

- “Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea,” 10 CFR Part 30 amendment (62 FR 63634) that became effective January 2, 1998.
- “Deliberate Misconduct by Unlicensed Persons,” 10 CFR Parts 30, 40, 61, 70, and 150 amendments (63 FR 1890 and 13773) that became effective February 12, 1998.
- “License for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations; Clarifying Amendments and Corrections,” 10 CFR Part 34 amendment (63 FR 37059) that became effective July 9, 1998.
- “Minor Corrections, Clarifying Changes, and a Minor Policy Change,” 10 CFR Parts 20, 32, 35, 36, and 39 amendments (63 FR 393477 and 63 FR 45393) that became effective October 26, 1998.
- Transfer for Disposal and Manifest; Minor Technical Conforming Amendments,” 10 CFR Part 20 amendment (63 FR 50127) that became effective November 20, 1998.