

January 31, 2008

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA Martin J. Virgilio for/*
Executive Director for Operations

SUBJECT: ANNUAL REPORT OF AGREEMENT STATES' AND
REGIONS' RADIOACTIVE MATERIALS PROGRAMS

The purpose of this memorandum is to provide the Commission with the status of the U.S. Nuclear Regulatory Commission (NRC) Regional and Agreement State radioactive materials programs. The June 30, 1997, Staff Requirements Memorandum (SRM) 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,'" directed staff to provide the Commission annual status reports on the performance of Agreement State radioactive materials programs. This report also includes the NRC Regional radioactive materials programs because the Integrated Materials Performance Evaluation Program (IMPEP) is applied to both Agreement State and Regional programs. Enclosure 1 is the Summary of Agreement States' Adequacy and Compatibility Statuses as of the end of Calendar Year (CY) 2007. Depending on a State's performance, IMPEP review cycles can range from 1-4 years. Of the 34 Agreement State programs, 29 Agreement State programs currently have a program finding of "adequate to protect public health and safety." Arizona, California, Georgia, Oregon, and Texas have a program finding of "adequate, but needs improvement." Of the 34 Agreement State programs, 2 Agreement State programs (California and New York) are "not compatible with NRC's program." The California program is not compatible with NRC's program because the State has not adopted several of the NRC amendments in a timely manner. All Regional radioactive materials programs currently have a program finding of "adequate to protect public health and safety." Additionally, the decision to put an Agreement State program on either Monitoring or Heightened Oversight is done at the direction of the Management Reviews Board (MRB), usually after an IMPEP review. Currently five states are on Heightened Oversight and two States are on monitoring.

When programmatic weaknesses exist in an Agreement State program, the NRC primarily uses two processes, Heightened Oversight and Monitoring, to ensure that an Agreement State program needing improvement is progressing toward re-establishing a fully satisfactory program

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without negatively impacting other parts of the 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 the 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. Discussions of each of the States on Heightened Oversight and Monitoring are provided in the corresponding sections below. Also provided are the details of States with findings of "adequate, but needs improvement" that are not subject to Heightened Oversight or Monitoring.

STATES ON HEIGHTENED OVERSIGHT

Arkansas:

A periodic meeting with the Arkansas Agreement State Program took place on August 28, 2007. Issues identified during the 2006 IMPEP review had not been resolved, specifically; Arkansas' loss of experienced staff allowed the backlog of licensing actions to persist and created a backlog of inspections. On November 6, 2007, the State submitted a letter transmitting a strategy for addressing the weaknesses challenging the Arkansas Agreement State Program. MRB meetings were held to review the results of the State's periodic meeting and the State's strategy on November 8 and December 4, 2007. The MRB agreed with the staff's recommendation to place the program on Heightened Oversight due to the findings from the periodic meeting. The MRB requested that the State submit a Plan, as required by the Heightened Oversight process, by mid-February 2008. The MRB directed staff to conduct bimonthly conference calls with the State to monitor the State's implementation of its Plan. Dependent on the State's progress in completing its Plan, the MRB tentatively agreed that a full IMPEP review should be conducted 18 months from the implementation of the Plan.

California:

A followup IMPEP review of the California Agreement State Program took place from March 27-30, 2006. The IMPEP review team noted marked improvement in the California Agreement State Program; however, the program did not demonstrate a period of sustained performance due to the short time frame between the improvements and the followup IMPEP review. In particular, the review team noted additional improvements are needed in the areas of event reporting and regulation promulgation. As a result, the review team recommended that the period of Heightened Oversight continue to ensure that the improvements are sustained. On June 15, 2006, the MRB met to consider the review team's findings. The MRB agreed with the team's findings, including the recommendation that the period of Heightened Oversight should continue. Because the State had completed all actions associated with open recommendations from the 2006 followup IMPEP review with the exception of adopting compatible regulations, the MRB approved extending the interval between status update calls to 4 months at the State's request. The State continued to update the NRC during the quarterly calls in 2007 and 2008 on the slow progress being made due to the State's cumbersome regulation adoption process. A full IMPEP review of the California Agreement State Program is scheduled for March 31 – April 4, 2008.

New York:

The New York Agreement State Program was found adequate and not compatible following the November 1-9, 2006, IMPEP review. Due to the number of overdue NRC amendments by the three State Agencies that now comprise the New York Agreement State Program, the State continued on Heightened Oversight, as decided by the MRB during its February 8, 2007, meeting. A number of NRC amendments that were identified as overdue as early as the 2002 IMPEP review remain overdue. At the MRB's direction, periodic meetings were held with each of the New York agencies that comprise the New York Agreement State Program approximately 1 year after the 2006 IMPEP review. The meetings took place November 27-29, 2007. After the periodic meeting summaries are issued, the MRB will convene to be briefed on the findings of the meetings. The next full IMPEP review of the New York Agreement State Program will take place in Fiscal Year (FY) 2011; however, the MRB may request that a followup review, focusing on regulations, take place sooner.

Oregon:

During the August 21-25, 2006, IMPEP review, the review team noted programmatic weaknesses in the Oregon Agreement State Program. Agreeing with the review team's recommendation, the MRB placed the Oregon Agreement State Program on Heightened Oversight at its November 7, 2006, meeting. The MRB's decision to place the program on Heightened Oversight was influenced by the review team's findings in the areas of quality of inspections, quality of licensing actions, incident response and reporting, and adoption of NRC amendments. A followup IMPEP review of the Oregon Agreement State Program was initially planned for August 2007; however, the review was delayed to accommodate the State's participation in a Top Official (TOPOFF) exercise. The review was conducted from January 28-31, 2008.

STATES ON MONITORING**Kentucky:**

The Kentucky Agreement State Program was placed on Monitoring following the October 19, 2005, MRB meeting to discuss the results of the periodic meeting held with representatives from the Commonwealth of Kentucky on July 14, 2005. Issues central to the MRB's decision to place the program on Monitoring included staff turnover, timeliness of inspections, and documentation of activities associated with incident and allegation investigation. Subsequent periodic meetings took place July 6, 2007, and July 31, 2007. The results of the subsequent periodic meetings, as well as the quarterly conference calls with the Commonwealth, demonstrated that the Commonwealth continues to exhibit progress in restoring a fully satisfactory program. A full IMPEP review of the Kentucky Agreement State Program will take place July 28 – August 1, 2008.

Texas:

The Texas Agreement State Program was placed on Heightened Oversight during the April 13, 2005, MRB meeting. The MRB's decision was based on information regarding staffing, timeliness of inspections, event reporting, and status of regulations identified during the March 15, 2005, periodic meeting with the State. A routine IMPEP review of the Texas Agreement State Program occurred September 7-16, 2005. The MRB met to consider the results of this review on December 14, 2005. Although the Texas Agreement State Program had exhibited progress in addressing the concerns identified at the March periodic meeting, the

review team recommended, and the MRB agreed, to continue the period of Heightened Oversight until sustained satisfactory performance is demonstrated. A followup review of the Texas Agreement State Program occurred November 13-17, 2006. On February 2, 2007, the MRB downgraded the Texas Agreement State Program to Monitoring status, determining that the State had demonstrated sufficient improvements to warrant less oversight. NRC staff will conduct a periodic meeting with the Texas Agreement State Program in May 2008.

STATES NOT SUBJECT TO ADDITIONAL REVIEW PROCESS

The Arizona and Georgia Agreement State Programs have an overall program finding of “adequate, but needs improvement;” however, neither of the programs are subject to additional review by the NRC.

Arizona:

A routine IMPEP review of the Arizona Agreement State Program occurred February 6-10, 2006. The review team noted budget and staffing issues, which have caused other aspects of the program to decline. Although the technical quality of regulatory actions is high, backlogs are forming, particularly in the inspection program. Because of the resource demands on the State associated with additional review by the NRC, the MRB, on May 2, 2006, decided against placing the program on Heightened Oversight or Monitoring to ensure that the program will be utilizing its limited resources in an efficient manner to address the backlogs. The MRB directed NRC staff to conduct a periodic meeting with the State approximately one year after the review to assess the State’s performance in addressing performance issues identified during the review. A periodic meeting with the Arizona Agreement State Program took place in March 2007. Based on the information from the periodic meeting, the MRB agreed that the next full IMPEP review of the Arizona Agreement State Program should be accelerated to March 2008. The review is scheduled to take place March 10-14, 2008.

Georgia:

The Georgia Agreement State Program was found “adequate, but needs improvement” at the MRB meeting on November 18, 2004. During the IMPEP review in FY 2004, the review team identified programmatic weaknesses in the performance indicators “Technical Quality of Inspections” and “Sealed Source and Device Evaluation Program.” The MRB agreed with the review team’s findings, but concluded that these issues rose to a level requiring additional review by the NRC. Subsequently, a periodic meeting was held on August 24, 2006, to discuss the State’s actions in response to the recommendations from the 2004 IMPEP review and inspection backlog. Based on the information from the periodic meeting, the MRB agreed that the IMPEP review of the Georgia Agreement State Program be conducted in August 2008, as scheduled.

TRENDING ANALYSIS

During FY 2007, no new trends were identified through IMPEP; however, several previously identified trends continued. Staffing and budgeting issues continued to affect many Agreement State programs. In some cases, the staffing issues were causing performance declines in other program areas, such as timeliness of inspections, reporting of incidents, and timeliness of adoption of regulations. IMPEP reviews have confirmed that all programs put health and safety first and foremost and reprioritized their work to overcome staffing or budgeting issues.

Enclosure 2 of this report presents the Summary of the NRC Regions' Adequacy Statuses as of the last day of CY 2007. Enclosure 3 presents a summary of FY 2007 IMPEP report issuances against the 104-day goal. Enclosure 4 presents a current summary of activities related to States on Heightened Oversight or Monitoring.

The NRC and the Agreement States continue to work in cooperation to achieve the goals of the IMPEP program. Inclusion of the Agreement States in the IMPEP review process enables a productive exchange of information. The NRC and the Agreement States are both able to benefit from the IMPEP program's blending of State and Federal resources.

SUMMARY

Staff believes that the NRC and the Agreement States are benefiting from a strong, healthy regulatory relationship. In addition to the cooperation demonstrated through the IMPEP process, the NRC and the Agreement States continue to work together on a number of issues. The NRC has engaged the Agreement States on emerging security requirements, such as Cesium Chloride irradiators. 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 response to the U.S. Government Accountability Office's findings regarding radioactive material security. Their cooperation with policy changes resulting from the Agency's action will be paramount in ensuring consistent, nationwide implementation of a program to prevent the malevolent use of radioactive materials. Staff continually seeks and receives Agreement State involvement in improving the nationwide protection of health, safety, security, and the environment.

Enclosures:

1. Summary of Agreement States' Adequacy and Compatibility Statuses
2. Summary of NRC Regions' Adequacy Statuses
3. IMPEP Report Tracking
4. Heightened Oversight and Monitoring Chart

cc: SECY
OGC
OCA
OPA
CFO

SUMMARY OF AGREEMENT STATES' ADEQUACY AND COMPATIBILITY STATUSES
(As of close of Calendar Year 2007)

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Alabama	2006	adequate	compatible
Arizona	2006	adequate, but needs improvement	compatible
Arkansas	2006	adequate	compatible
California	2006	adequate, but needs improvement	not compatible
Colorado	2006	adequate	compatible
Florida	2007	adequate	compatible
Georgia	2004	adequate, but needs improvement	compatible
Illinois	2006	adequate	compatible
Iowa	2007	adequate	compatible
Kansas	2006	adequate	compatible
Kentucky	2004	adequate	compatible
Louisiana	2004	adequate	compatible
Maine	2007	adequate	compatible
Maryland	2007	adequate	compatible
Massachusetts	2006	adequate	compatible
Minnesota	2008	adequate	compatible
Mississippi	2005	adequate	compatible
Nebraska	2006	adequate	compatible
Nevada	2005	adequate	compatible
New Hampshire	2005	adequate	compatible
New Mexico	2005	adequate	compatible
New York	2007	adequate	not compatible
North Carolina	2004	adequate	compatible
North Dakota	2007	adequate	compatible
Ohio	2005	adequate	compatible
Oklahoma	2006	adequate	compatible

STATE	FISCAL YEAR OF REVIEW	ADEQUACY FINDING	COMPATIBILITY FINDING
Oregon	2006	adequate, but needs improvement	compatible
Rhode Island	2008	adequate	compatible
South Carolina	2007	adequate	compatible
Tennessee	2004	adequate	compatible
Texas	2007	adequate, but needs improvement	compatible
Utah	2007	adequate	compatible
Washington	2003	adequate	compatible
Wisconsin	2005	adequate	compatible

SUMMARY OF NRC REGIONS' ADEQUACY STATUSES
(As of close of Calendar Year 2007)

REGION	REVIEW YEAR	ADEQUACY FINDING
Region I	2005	adequate
Region II	2006	adequate
Region III	2007	adequate
Region IV	2004	adequate

**IMPEP REPORT TRACKING
FISCAL YEAR 2007**

State or Region	Review Date Month/Year	Total Number of Days from Review to Release of Final Report (Goal: 104 Days)
Maine	10/06	98
New York*	11/06	113
Texas Followup	11/06	104
Florida	2/07	96
North Dakota	4/07	104
Utah	6/07	105
South Carolina	7/07	104
Maryland	8/07	101
Region III	8/07	103
Iowa	9/07	104

* The Management Review Board meeting was postponed to accommodate all parties' schedules; therefore, the issuance of the final report was delayed.

HEIGHTENED OVERSIGHT AND MONITORING CHART
(As of close of Calendar Year 2007)

State	RSAO	Last IMPEP Review	Last Contact	Next Contact	Action(s) Due
HEIGHTENED OVERSIGHT					
Arkansas	Erickson	8/28-9/1/06	Special MRB 12/4/07	Bimonthly Call 2/08	<ol style="list-style-type: none"> 1. Bimonthly calls. 2. Status Reports due 2 weeks prior to calls. 3. Next IMPEP FY 2009.
California	Erickson	3/27-30/06 Followup	Periodic Call 9/19/07	Periodic Call 1/16/08	<ol style="list-style-type: none"> 1. Periodic calls (every 4 months). 2. Status Reports due 2 weeks prior to calls. 3. Full IMPEP scheduled for 3/31-4/4/08.
New York	Kottan	11/1-9/06	Periodic Mtgs 11/27-29/07	Bimonthly Call 1/08	<ol style="list-style-type: none"> 1. Bimonthly calls. 2. Status Reports due 2 weeks prior to calls. 3. Next full IMPEP: 2011.
Oregon	McLean	8/21-25/06	MRB 11/7/06	Bimonthly Call 2/07	<ol style="list-style-type: none"> 1. Bimonthly Calls with Team Leader and NRC Staff. 2. Status Reports due 2 weeks prior to calls. 3. Followup IMPEP scheduled for 1/28-31/08.
MONITORING					
Kentucky	Kottan	7/19-23/04	Quarterly Call 12/5/07	Quarterly Call 3/08	<ol style="list-style-type: none"> 1. Quarterly calls. 2. Periodic meeting held 7/07. 3. Next IMPEP 7/28-8/1/08.
Texas	McLean	11/13-17/06 Followup	Quarterly Call 12/11/07	Quarterly Call 3/08	<ol style="list-style-type: none"> 1. Quarterly calls. 2. Periodic meeting to be held 5/08. 3. Next IMPEP FY 2009.