



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION IV
1600 E. LAMAR BLVD.
ARLINGTON, TX 76011-4511

March 15, 2018

Julia Schmitt, Program Manager
Office of Radiological Health
Department of Health and Human Services
301 Centennial Mall South
P.O. Box 95026
Lincoln, Nebraska 68509-5026

Dear Ms. Schmitt:

A periodic meeting with you and your staff was held telephonically on January 24, 2018. The purpose of this meeting was to review and discuss the status of the Nebraska Agreement State Program. The U.S. Nuclear Regulatory Commission was represented by Linda Howell, Deputy Director, Division of Nuclear Materials Safety and me.

I have completed and enclosed a general meeting summary, including any specific actions resulting from the discussions. A Management Review Board meeting to discuss the outcome of the periodic meeting will be scheduled and the date and time will be provided to you in a separate transmission.

If you feel that our conclusions do not accurately summarize the meeting discussion, or have any additional remarks about the meeting in general, please contact me at (817) 200-1143 or via e-mail at Randy.Erickson@nrc.gov to discuss your concerns.

Sincerely,

/RA/

Randy R. Erickson
State Agreements Officer
Division of Nuclear Materials Safety

Enclosure:
Periodic Meeting Summary

AGREEMENT STATE PERIODIC MEETING SUMMARY FOR
NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DATE OF MEETING: JANUARY 24, 2018

U.S. Nuclear Regulatory Commission (NRC) Attendees	Nebraska Office of Radiological Health Attendees
Linda Howell, Deputy Director, Division of Nuclear Materials Safety, Region IV	Julia Schmitt, Program Manager
Randy Erickson, Regional State Agreements Officer, Region IV	Howard Schuman, Health Physicist
	Bryan Miller, Health Physicist
	Larry Harisis, Health Physicist
	Malisa McCown, Administrative Assistant
	Beverly Spang, Staff Assistant

DISCUSSION: The Nebraska Agreement State Program is administered by the Radiological Health Program (the Program) which is located within the Department of Health and Human Services (the Department). The Program Director reports to the Administrator of Environmental Health. The previous IMPEP review was conducted the week of January 11-15, 2016.

During the 2016 review of the Nebraska Program, the team found the Program's performance to satisfactory for five out of six indicators: Technical Staffing and Training, Status of Materials Inspection Program, Technical Quality of Inspections, Technical Quality of Licensing Actions, and Technical Quality of Incident and Allegation Activities. The indicator Compatibility Requirements was found satisfactory, but needs improvement. No recommendations were made for the Program.

The team also recommended, and the Management Review Board (MRB) agreed, that the Nebraska Agreement State Program was adequate to protect public health and safety, was compatible with the NRC program; and, that the next IMPEP review should take place in approximately four years.

TOPICS COVERED DURING THE MEETING INCLUDED:

Program Challenges

- In 2011 the Nebraska legislature passed the Administrative Procedures Act which required that all State rules legislatively mandated must be adopted within 12 months and that those rules have priority and are processed before rules that are not legislatively mandated. Other rules, such as rules required by the NRC as a matter of compatibility, must wait in the queue for the legislatively mandated rules to be processed first. The implementation of this law slowed down the Program's rule promulgation process and ultimately resulted in the Program receiving a Satisfactory but Needs Improvement finding for the Compatibility indicator during the 2016 IMPEP review. As a result of the 2016 IMPEP review the Department's Legal Services agreed to make regulations needed for compatibility a priority. Then in 2017, the Governor issued Executive Order 17-04 which in part, required state agencies to suspend all rulemaking

through December 31, 2017. Shortly after issuance the Department requested and was granted an exemption to the Executive Order giving them rulemaking priority specifically for a rule package that was already in the system. At the time of the Periodic Meeting in January 2018, that regulation package was on the governor's desk awaiting signature.

- The Program reported that they have experienced difficulty with licensee implementation of Part 37 equivalent requirements. While they have held public meetings with licensee groups, and spent a lot of time helping to prepare licensees for this major regulatory change, they have found that many licensees continue to have difficulty understanding the regulations and how to implement them. The Program continues to work with their licensees, but have begun to issue violations and take enforcement action.

Feedback on NRC's Program

- The Program Manager noted that Periodic Meetings appear to be more like mini IMPEP reviews rather than the less structured information exchange and discussion of technical issues that had occurred in the past.
- The Program expressed appreciation for all the guidance that NRC has been publishing lately. It helps them to better align with expectations.

Program Reorganizations

The Program has not experienced any reorganizations since the 2016 IMPEP review.

Program Budget/Funding

The Program is fee funded with a dedicated fund. The Program reported that currently fees are sufficient to effectively operate their program. The last fee increase was in 2009.

Technical Staffing and Training (2016 IMPEP: Satisfactory)

During the 2016 IMPEP review, the Program consisted of the Administrator of Environmental Health, the Radiological Program Manager, and three Health Physicists for a total of 3.8 FTE in the radioactive materials program. They also have two non-technical administrative staff members who support the Program. At the time of the Periodic Meeting, the Administrator of Environmental Health had retired and her job had been posted. No other staff left the Program since the 2016 IMPEP review.

At the time of the 2016 IMPEP review, the Program had a documented training plan consistent with NRC's Inspection Manual Chapter 1248, "Qualification Programs for Federal and State Materials and Environmental Management Programs." Staff individually track continuing education requirements of 24 hours every two years and report that back to the Program Manager annually.

Status of Materials Inspection Program (2016 IMPEP: Satisfactory)
Technical Quality of Inspections (2015 IMPEP: Satisfactory)

The Program reported that since the 2016 IMPEP review, they have not conducted any inspections overdue, nor are any inspections currently overdue. The Program has been meeting the requirement for reciprocity inspections with having completed 22 percent in 2016 and 20 percent in 2017. The Program also reported that inspector accompaniments have been performed timely since the 2016 IMPEP review.

Technical Quality of Licensing Actions (2016 IMPEP: Satisfactory)

The Program currently has 130 specific licensees. License reviewers completed a total of 361 licensing actions since the 2016 IMPEP review. At the time of the Periodic Meeting, the Program had five licenses under timely renewal.

At the time of the 2016 IMPEP review, the Program was following NRC's revised pre-licensing guidance. The Program conducts pre-licensing visits on 100 percent of the applicants regardless of whether or not they are known entities. All licensees that fall under Part 37 equivalent regulations receive an onsite security review prior to issuance of the license. No licenses are delivered at the time of pre-licensing inspections. There have been no changes to this process since the 2016 IMPEP review.

Technical Quality of Incidents and Allegations (2016 IMPEP: Satisfactory)

At the time of the meeting the Program had reported 25 total events to the Nuclear Material Events Database since the 2016 IMPEP review. No events remained open. The Program reported that a total of nine HOO reportable events had been conveyed to the NRC in accordance with the established guidance in SA-300, "Reporting Materials Events", of which three generally licensed device (lost tritium exit signs) events were not reported immediately to the HOO.

Since the 2016 IMPEP review the Program has not received any allegations directly, nor has NRC referred any allegations to the Program.

Regulations and Legislative Changes (2016 IMPEP: Satisfactory but needs Improvement)

Nebraska became an Agreement State on October 1, 1966. The Nebraska Agreement State Program's statutory authority is located in Title 180 of the Nebraska Administrative Code. The Department is designated as the State's radiation control agency.

Only one significant legislative change occurred since the 2016 IMPEP review. That change was Executive Order 17-04, issued by the Governor on July 6, 2017 which in part, required all state agencies to immediately suspend all rulemaking and to review all current and pending regulations to determine if they are overly restrictive or are not cost vs benefit effective, and if so, to revise or repeal them. On August 31, 2017, the Department requested an exemption to Executive Order 17-04 to allow the Department to adopt pending regulations already in process. That exemption was granted allowing regulations to proceed to the Governor's desk for signature.

At the time of the 2016 IMPEP review, a regulation package containing RATS ID: 2011-1, 2011-2, 2012-2, 2012-3, 2012-4, 2013-1 and 2013-2 was overdue for adoption. That regulation package was adopted on November 28, 2016. A second regulation package containing RATS ID: 2015-1, 2015-2, 2015-3, 2015-4 and 2015-5 was sent for signature on January 8, 2018 and was signed by the Governor on March 8, 2018 with an effective date of March 13, 2018. Currently the Program has no overdue regulations.

State Initiatives

The Program reported the most significant initiative undertaken was their review and justification of all their regulations under Executive Order 17-04 as previously described.

NRC Initiatives

Some of the current NRC initiatives that were discussed with the program are noted below:

- NRC recently provided a SECY paper on Staff's Evaluation of the NRC's Patient Release Program to the Commission.
- NRC staff is developing an Information SECY paper to the Commission that includes a review of Emerging Medical Technologies developed under 10 CFR Part 35.1000.
- NRC's efforts to finalize the NUREG-1556 volumes.
- Establishment of the General License Re-Evaluation Working Group which will perform an evaluation of the existing general license program to ensure that it provides for the protection of public health and safety in the current environment.
- GAO audit of Part 37 effectiveness to evaluate both NRC and Agreement State implementation of the rule.
- NRC's evaluation of cybersecurity for materials which determined that no rule changes were warranted. NRC is developing an Information Notice to communicate effective practices.
- An update on both Vermont's and Wyoming's efforts to become Agreement States.
- The Management Directive 5.6, working group is addressing and incorporating comments. It's expected to issue the Management Directive in fall of 2018.
- Management Directive 5.9, "Adequacy and Compatibility of Program Elements for Agreement State Programs." – expect to issue late spring 2018
- Management Directive /Handbook 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)" - currently addressing comments – expect to issue fall of 2018.

- Management Directive 5.9, “Adequacy and Compatibility of Program Elements for Agreement State Programs.” – expect to issue late spring 2018

CONCLUSIONS:

The Agreement State Program continues to be an effective and vital part of the Nebraska Department of Health and Human Services. They are currently fully staffed. The Program is effectively managing its licensing and inspection activities well and is responding to incidents and allegations as appropriate. They have struggled with new legislation which has made it difficult to meet timeliness goals for rule adoption, but they have found ways to work around those impediments.

NRC staff recommends that the next IMPEP review be conducted as scheduled in 2020.