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EXECUTIVE SUMMARY

Directive and Handbook 5.6 are being revised to incorporate recommendations from two working group reports; directions from the Management Review Board; additional enhancements identified since 2002; and to provide updated revisions based on the Office of State and Tribal Programs name change.

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I. EVALUATION

A. NRC’s Oversight Responsibility of Agreement State Programs

The authority for review of Agreement States is contained in Section 274j(1) of the Atomic Energy Act (AEA), as amended. The NRC has programmatic responsibility to periodically review the actions of the Agreement States to comply with the requirements of the AEA to continue to maintain adequate and compatible programs. While this authority is reserved to the NRC, the current review process, Integrated Materials Performance Evaluation Program (IMPEP), is conducted with Agreement State staff participation under the National Materials Program¹. The IMPEP process employs a team of NRC and Agreement State staff to assess materials programs.

B. Evaluation Frequency

The NRC reviews the performance of each NRC region, Agreement State, and applicable NRC headquarters program on a periodic basis. The schedule for conducting each review is developed by the Office of Nuclear Material Safety and Safeguards (NMSS). The IMPEP reviews of the NRC and Agreement State materials programs are typically scheduled every four years; however, IMPEP reviews may be extended to five years if the materials program has had two consecutive IMPEP reviews with all indicators found satisfactory. The interval between IMPEP reviews may be shortened due to performance weaknesses and at the direction of the MRB, based on the review team's recommendation, or other information obtained during the MRB meeting or review period.

C. Evaluation Process Sequence

The typical evaluation process sequence for the IMPEP review is summarized below:

1. Develop the review schedule for the year.
2. Assemble and train team members.
3. Designate a team leader and members for each scheduled review.
4. Transmit the IMPEP questionnaire to the program scheduled for review.
5. Provide to team members a copy of questionnaire responses and the most current information on the program.
6. Assess a sample of inspections at different types of licensed facilities by accompanying inspectors before the onsite portion of the IMPEP.
7. Conduct the onsite portion of the IMPEP review, using the criteria specified in this handbook and applicable performance review procedures.

¹The National Materials Program is defined as the broad collective framework within which both the NRC and the Agreement States function in carrying out their respective radiation safety regulatory programs.

8. Prepare a draft IMPEP report, with the recommendation for the overall program performance, for the Agreement State Program Branch (ASPB) Branch Chief's signature and team leader concurrence.
9. Issue the draft report to the program.
10. Review and consider written comments received from the program.
11. Prepare the proposed final report for consideration by the Management Review Board (MRB).
12. Conduct the MRB meeting.

D. Other Reviews Under IMPEP

1. Follow-up IMPEP Reviews:

A followup IMPEP review is a limited evaluation specific to findings from a previous IMPEP review and is conducted before the next routine IMPEP review. The purpose of the followup IMPEP review is to evaluate a materials program's response to recommendations, and to re-evaluate indicator(s) found "unsatisfactory."

2. Focused IMPEP Reviews:

A focused IMPEP review is a special review under IMPEP that is performed due to unforeseen circumstances that occur during an IMPEP cycle. The purpose of the focused IMPEP review is to address the specific circumstance or challenge facing a materials program.

3. Periodic Meetings:

The periodic meeting is created to help the NRC and the Agreement States remain knowledgeable of the respective programs and to plan for future IMPEP reviews. The purpose of the periodic meeting is to provide an open forum for interactive discussions of a materials program status and performance.

E. Planning for IMPEP Reviews

For complex programs and programs with closed low-level radioactive waste and uranium recovery, the IMPEP team leader should prepare a review plan for the respective evaluations.

F. IMPEP Training and Qualification Process

The training and qualification process is intended to provide IMPEP team members and team leaders with sufficient knowledge to conduct State and NRC material program reviews that are technically correct and in accordance with NRC policies and procedures. NMSS procedure

<insert the SA> describes training requirements and guidelines for the IMPEP team member and team leader qualifications.

II. PERFORMANCE INDICATORS

A. General

1. 1A description of the common and non-common performance indicators to be evaluated, as appropriate, for each NRC region, Agreement State, and applicable NRC headquarters program is given in Sections (B) and (C) of this part. The evaluation criteria (i.e., performance standards) against which these indicators are to be assessed are described in Part III of this handbook. These reviews should be performance-based and are used to evaluate whether the NRC and Agreement State programs provide adequate protection of public health and safety, and security, and to determine compatibility of the Agreement States. The review should identify potential impacts on public health and safety, and identify underlying causes in areas where performance does not fully meet the criteria. The reviews are instrumental in improving the NRC and Agreement State program performance, thus ultimately leading to improved and more consistent assessment of licensee performance throughout the NMP.
2. The performance indicators should be used as a starting point of inquiry. This, in turn, should lead review team members to a more careful examination of the underlying causes of potential problem areas. Review team members may find the cause(s) of a program performance problem in more than one performance indicator. In this situation, the impact of issues in one performance indicator could be compounded when combined with others and correlate with performance in another indicator. Conversely, a regulatory program with deficiencies in one particular indicator could, nonetheless, be found satisfactory if there are sufficient mitigating factors with respect to other indicators.

B. Common Performance Indicators

1. Common Performance Indicator 1—Technical Staffing and Training
 - (a) The ability to conduct an effective regulatory program is largely dependent on having a sufficient number of experienced, knowledgeable, well-trained technical personnel.
 - (b) Staff turnover and understaffing may have an adverse effect on the implementation of the regulatory program, and could affect the program's ability to protect public health and safety and maintain a compatible program. Items that should be considered include:
 - (i) Sufficient level of qualified technical and administrative staff;
 - (ii) Sufficient management oversight and program support;
 - (iii) Rate of turnover and underlying causes, and length of time that positions are vacant;

- (iv) Determination as to whether staffing issues are a chronic problem or short-term phenomenon;
 - (v) Steps being taken to address staffing issues; and
 - (vi) 1Impact of staffing issues on other performance indicators.
- (c) Training and qualification of the technical staff should be evaluated. Technical staff should have a bachelor's degree or equivalent training and/or experience in the physical and/or life sciences. Training requirements for the NRC license reviewers and inspectors are specified in the NRC Inspection Manual Chapter (IMC)1248, "Formal Qualifications Program for Federal and State Material and Environmental Management Programs" which includes qualification journals for license reviewers and inspectors. The requirements include a combination of didactic instruction and practical on-the-job training appropriate to the types of licenses reviewed or inspected. Agreement States should follow IMC 1248, or they should have a compatible documented program for training and qualification of personnel.
- (d) The overall quality of training available to, and taken by, materials program personnel should be evaluated. The staff should be afforded opportunities for training and refresher training that are consistent with the needs of the program, such as attendance at counterpart meetings, university programs, technical workshops, and conventions.

2. Common Performance Indicator 2—Status of Materials Inspection Program

- (a) 1Periodic inspections of licensed operations are essential to ensure that activities are being conducted in compliance with regulatory 1requirements and consistent with good safety practices. The frequency of inspections is specified in the NRC Inspection Manual, Chapter 2800, and is dependent on the amount and kind of agreement 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.
- (b) Information regarding the number of high priority overdue inspections is a significant measure of the status of an Agreement State's or an NRC region's materials inspection program. Reviews also should examine specific cases in detail when the inspection frequency has been significantly exceeded (i.e., by more than 50 percent). High priority inspections are defined as initial inspections and routine Priority 1, 2, and 3 inspections.
- (c) Reciprocity inspections are essential to ensure that activities conducted under reciprocal recognition are in compliance with regulatory requirements and consistent with good safety practices. The NRC follows IMC 1220, "Processing of NRC Form 241 and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20" to meet its reciprocity objectives. Agreement State programs could use a

similar a risk informed, performance-based approach for determining reciprocity candidacy as its alternative policy for reciprocity inspection performance in lieu of IMC 1220.

3. Common Performance Indicator 3—Technical Quality of Inspections

- (a) Review of this indicator should focus on the scope, completeness, technical quality and accuracy of completed inspections and related documentation. The observations by the review team made during the accompaniment of program staff during inspections of licensed facilities is a key aspect to evaluating the program's performance regarding the licensee's adherence to regulatory requirements and the safe and secure use of agreement material.
- (b) The review team will examine the documentation and implementation of NRC or compatible Agreement State inspection procedures and guidance.
- (c) Review teams will conduct in depth, onsite reviews of a 1cross-section of completed inspection reports performed by different inspectors with a focus on high priority and security inspections.
- (d) The review team members will accompany program staff on a sufficient number of higher priority inspections at different types of licensed facilities to assess the knowledge, skills, capabilities of the NRC regional and Agreement State inspectors. The review team will also examine adherence to NRC and/or compatible Agreement State inspection procedures. These accompaniments will occur prior to the onsite review of the NRC region or Agreement State to afford the review team sufficient time to observe inspectors at different types of licensee facilities.
- (e) Review teams will verify the accompaniment of all inspectors on an annual basis by supervisors or designees, such as senior staff, to evaluate the knowledge, skills, and capabilities of the NRC regional and Agreement State inspectors. 1

4. Common Performance Indicator 4—Technical Quality of Licensing Actions

- (a) This performance indicator evaluates the technical quality of the licensing program on the basis of an in depth, onsite review of a representative cross-section of licensing actions. The review team will examine the documentation and implementation of NRC or compatible Agreement State licensing guidance and procedures.
- (b) The review team will evaluate the program's performance for implementing its pre-licensing guidance, and supervisory or peer review of licensing actions.

- (c) The review should include an examination of various license types and licensing actions with emphasis on those with high risk-significant materials and activities, including new licenses, renewals, amendments, terminations, and decommissioning.
- (d) The onsite review should capture a representative cross-section of licensing actions as completed by each of the reviewers in the region or Agreement State.
- (e) Technical quality of reviews should examine the timeliness of completed licensing actions. For those licensing actions that have been pending for more than a year, the review team should determine whether the failure to act on such requests may have safety and security implications.

5. Common Performance Indicator 5—Technical Quality of Incident and Allegation Activities

- (a) The quality, thoroughness, and timeliness of a regulator's response to incidents and allegations of safety concerns can have a direct bearing on safety and security.
- (b) A determination of the overall quality of the program will be made after a careful assessment of incident response and allegation investigation procedures, implementation of these procedures, internal and external coordination, timely incident reporting, and followup actions.
- (c) The review team will examine the documentation and implementation of incident response and allegation response procedures.
- (d) The review team will conduct in depth, onsite reviews of a cross-section of incident response and allegation response reports.
- (e) The review team will evaluate Agreement State reporting of incidents to the NRC Headquarters Operations Center and to the Nuclear Material Events Database (NMED).

C. 1 Non-Common Performance Indicators

1. Non-Common Performance Indicator 1—Legislation and Regulations

- (a) 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 agreement. The statutes must authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety. The State must be authorized through its legal authority to license, inspect, and enforce legally binding requirements, such as regulations and licenses. State statutes should be consistent with Federal statutes, as appropriate.
- (b) The Agreement State shall adopt legally binding requirements, such as regulations and other necessary program elements consistent with Management Directive 5.9,

"Adequacy and Compatibility of Agreement State Programs," and the current revisions of NMSS Procedures, SA-201, "Review of State Regulatory Requirements," and SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements," t

- (c) 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 1requirement is not later than 3 years after the effective date of the NRC's final rule or as approved by the Commission.
 - (d) 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.
2. Non-Common Performance Indicator 2—Sealed Source and Device Evaluation Program
- Three subelements will be evaluated to determine if the SS&D program is adequate.
- (a) Technical Staffing and Training
- Evaluation of SS&D review staffing and training should be conducted in the same manner and as part of the Common Performance Indicator 1 (Sections (B)(1)(a)–(c) of this part), except with a focus on training and experience commensurate with the conduct of the SS&D reviews as described in IMC 1248.
- (b) Technical Quality of the Product Evaluation Program
- Adequate technical evaluations of sealed source and device (SS&D) designs are essential to ensure that SS&Ds used by both licensees and persons exempt from licensing will maintain their integrity and that the design features are adequate to protect public health and safety. The technical quality of the product evaluation program should be evaluated by the review team on the basis of an in depth review of a representative cross-section of evaluations performed includes various types of products and types of actions. 1To the extent possible, the review team should capture a representative cross-section of completed actions by each of the NRC or Agreement State SS&D reviewers.
- (c) Evaluation of Defects and Incidents Regarding SS&Ds
- Reviews of SS&D incidents should be conducted in the same manner and as part of the Common Performance Indicator 5 (Section (B)(5) of this part) to detect possible manufacturing defects and the root causes of these incidents. The incidents should be evaluated to determine if other products may be affected by similar problems. Appropriate action and notifications to NRC, Agreement States, and others, as appropriate, should occur in a timely manner.
3. Non-Common Performance Indicator 3—Low-Level Radioactive Waste Disposal Program

Five subelements will be evaluated to determine if an Agreement State's performance of its low-level radioactive waste disposal program is adequate.

(a) Technical Staffing and Training

Evaluation of staffing and training should be conducted in the same manner and as part of the Common Performance Indicator 1 (Sections (B)(1)(a)–(c) of this part). The staffing for this indicator can include contractual support or support from other State agencies. Professional staff should normally have bachelor's degrees or equivalent training in the physical, life or earth sciences, or engineering. Staff and support contractors' qualifications, training, and experience also should include the disciplines of health physics, civil or mechanical engineering, geology, hydrology and other earth sciences, and environmental science.

(b) Status of Low-Level Radioactive Waste Disposal Inspection

- (i) Periodic inspections of low-level radioactive waste disposal facilities, from the pre-operational through the post-closure phase, are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.
- (ii) The frequency of inspections for operating low-level radioactive waste disposal facilities is specified in NRC Inspection Manual, Chapter 2800, as yearly. Inspection frequencies for non-operational phase inspections should be established by the program. There must be a capability for maintaining and retrieving statistical data on the status of the inspection program for the low-level radioactive waste disposal program.

(c) Technical Quality of Inspections

Review team members will accompany Agreement State inspectors, including onsite resident inspectors, to assess the program's performance regarding evaluation of licensee's adherence to regulatory requirements and the safe and secure use of agreement material at low-level radioactive waste disposal facilities during the inspections discussed in subelement b above. These accompaniments will occur at a time other than the onsite review. Reviews in this area focus on the scope, completeness, and technical accuracy of inspections and related documentation. Review teams will conduct in depth, onsite reviews of completed inspection reports. In addition, review teams will verify that supervisors generally conduct accompaniments of inspectors on an annual basis to provide management quality assurance.

(d) Technical Quality of Licensing Actions

- (i) An acceptable program for licensing low-level radioactive waste disposal facilities ensures that the proposed waste disposal facilities will meet State licensing requirements for waste product and volume, qualifications of personnel, site characterization, performance assessment, facilities and

equipment, operating and emergency procedures, financial qualifications and assurances, closure and decommissioning procedures, and institutional arrangements in a manner sufficient to establish a basis for licensing action. This program may be accomplished through the preparation and use of internal licensing guides, policy memoranda, or use of NRC compatible guides. Licensing decisions should be adequately documented through safety evaluation reports, or similar documentation, of the license review and approval process. Opportunities for public hearings are provided in accordance with applicable State administrative procedure laws during the process of licensing a low-level radioactive waste disposal facility.

- (ii) The review team should evaluate the technical quality of the licensing program in the areas of health physics, hydrology, and structural engineering in addition to an evaluation of the license review process. Technical quality includes not only the review of completed actions but also an examination of any ongoing requests for licenses or renewals that may have safety and security implications.

(e) Technical Quality of Incident and Allegation Activities

Reviews of low-level radioactive waste program incidents and allegations of safety concerns should be conducted in the same manner and as part of Common Performance Indicator 5 (Sections (B)(5) of this part).

4. Non-Common Performance Indicator 4—Uranium Recovery Program

Five subelements, as appropriate, will be evaluated to determine if the performance of the Region IV or an Agreement State's uranium recovery program is adequate.

(a) Technical Staffing and Training

Evaluation of staffing and training should be conducted in the same manner and as part of Common Performance Indicator 1 (Sections (B)(1)(a)–(c) of this part). The staffing for this indicator can include contractual support or support from other State agencies. Professional staff normally should have bachelor's degrees or equivalent training in the physical sciences, life or earth sciences, or engineering. Staff and support contractors' qualifications, training, and experience should include the disciplines of health physics; civil or mechanical engineering; geology, hydrology and other earth sciences; and environmental science.

(b) Status of the Uranium Recovery Inspection Program

Periodic inspections of licensed uranium recovery operations are essential to ensure that activities are being conducted in compliance with regulatory requirements and consistent with good safety practices. The frequency of inspections is specified in the NRC Inspection Manual, Chapter 2600, for in situ leach mining facilities and in Chapter 2801 for conventional uranium and thorium mills. Uranium recovery facilities that are

on standby or under decommissioning also should be inspected at that frequency. Inspections should occur more frequently if significant regulatory concerns develop, before major changes are made to operations, or if generic problems are identified. There must be a capability for maintaining and retrieving statistical data on the status of the inspection program for the uranium and thorium program.

(c) 1Technical Quality of Inspections

Review team members will accompany NRC or Agreement State inspectors to assess the program's performance regarding evaluation of licensee's adherence to regulatory requirements and the safe and secure use of agreement material to evaluate their knowledge and capabilities at uranium milling facilities during the inspections discussed in subelement b above. These accompaniments will occur at a time other than the onsite review of the region or Agreement State. Reviews of this subelement focus on the scope, completeness, and technical accuracy of completed inspections and related documentation. Review teams will conduct in depth, onsite reviews of completed inspection reports. In addition, review teams will verify that supervisors generally conduct accompaniments of inspectors on an annual basis to provide management quality assurance.

(d) 1Technical Quality of Licensing Actions

- (i) An acceptable program for licensing uranium recovery activities ensures that essential elements of NRC licensing requirements for radiation protection, qualifications of personnel, facilities and equipment, operating and emergency procedures, financial qualification and assurance, closure and decommissioning procedures, and institutional arrangements are met in a manner sufficient to establish a basis for licensing action. This program may be accomplished through the preparation and use of internal licensing guides, policy memoranda, or use of NRC compatible guides to ensure technical quality in the licensing program. Pre-licensing inspection of complex facilities are conducted, when appropriate.
- (ii) To evaluate the technical quality of the NRC or Agreement State licensing program, an in depth review of an aspect of the uranium recovery license (e.g., radiation protection, hydrology, or geotechnical engineering) will be conducted. Technical quality includes not only the review of completed actions but also an examination of any ongoing requests and license renewals that may have health and safety implications. Technical quality includes review of the Agreement State's compliance with the statutory requirements or prohibitions in Section 274o of the Atomic Energy Act, as amended.

(e) 1Technical Quality of Incident and Allegation Activities

Reviews of uranium recovery program incidents and allegations of safety concerns should be conducted in the same manner and as part of Common Performance Indicator 5 (Section (B)(5) of this part).

D. Partial Performance Indicators

III. EVALUATION CRITERIA

The 1NRC regions and Agreement States will be evaluated in their ability to conduct effective licensing and inspection programs using the common and non-common performance indicators, described in Part II of this handbook, as appropriate. The evaluation criteria for each performance indicator are given below. These criteria do not represent an exhaustive list of the factors that may be relevant in determining performance. In some cases, there may be additional considerations not listed here that are indicative of a program's performance in a particular area. For the non-common performance indicators that contain subelements, a single finding for the overall performance of the non-common performance indicator will be made by the review team.

A. 1Common Performance Indicator 1—Technical Staffing and Training

1. Satisfactory

1Review demonstrates implementation of a well-conceived and balanced staffing strategy throughout the assessment period and demonstrates that technical staff are trained and qualified. This 1performance is indicated by the presence of most of the following features:

- (a) There is sufficient and balanced staffing in all aspects of the materials program.
- (b) There are few, if any, vacancies, especially at the senior-level positions.
- (c) There is prompt management attention and review, such as development of a corrective action plan to address problems in high rates of attrition, positions being vacant for extended periods, and succession planning and knowledge transfer.
- (d) Qualification criteria for hiring new technical staff are established, implemented, and documented. Staff would normally be expected to have bachelor's degrees in the physical and/or life sciences (or equivalent documented training and/or experience). Senior personnel should have additional training and experience in radiation protection commensurate with the types of licenses they issue or inspect.
- (e) License reviewers and inspectors are trained and qualified in a reasonable time period. There should be a focused and continuous effort to adhere to the requirements and conditions specified in IMC 1248, and the applicable qualifications journals, or to receive

equivalent training elsewhere. For the Agreement States, compatible requirements should be in place and followed.

(f) Management commitment to training is clearly evident.

2. Satisfactory, But Needs Improvement

Review demonstrates the presence of some of the following conditions affecting program performance:

(a) Staff turnover adversely upsets the balance of staffing in the materials program affecting performance in other indicator(s).

(b) Some vacant positions not readily filled.

(c) Some evidence of lack of management attention or actions to deal with staffing problems.

(d) The program has only one technically qualified individual and the program has not hired a second individual to provide adequate staffing depth in the program.

(e) Some of the licensing and inspection personnel not making prompt progress in completing all of the training and qualification requirements.

(f) The training and qualification standards do not adequately address personnel needs of the program.

3. Unsatisfactory

Review demonstrated the presence of significant performance issues under the other indicators which are determined to be related to some of the following conditions:

(a) There is insufficient staffing for the needs of the program.

(b) There is significant staff turnover relative to the size of the program resulting in unsatisfactory performance in another indicator.

(c) Most vacant positions are not filled for extended periods.

(d) There is little evidence of management attention or actions to deal with staffing problems.

(e) Most of the licensing and inspection personnel are not promptly completing all of the training and qualification requirements specified in IMC 1248 (or compatible Agreement State requirement) or equivalent requirements of the program .

(f) New staff members are hired without the scientific or technical backgrounds that would equip them to receive technical training.

B. Common Performance Indicator 2—Status of Materials Inspection Program

1. Satisfactory

- (a) Less than 10 percent of all Priority 1, 2, or 3 licensees due for inspection over the review period are inspected at intervals exceeding the frequencies identified in IMC 2800 with a grace period of 25 percent. Initial inspections that are completed more than 12 months after license issuance are also included in the 10 percent calculation.
- (b) Inspection findings are typically communicated to the licensee within 30 calendar days after all inspection related information has been obtained, and an inspection has been determined to be completed.
- (c) Reciprocity inspections are performed in a manner that meets the requirements identified in IMC 1220 or alternative reciprocity inspection policy.

2. Satisfactory, But Needs Improvement

- (a) More than 10 percent of all Priority 1, 2, or 3 licensees due for inspection over the review period are inspected at intervals exceeding the frequencies identified in IMC 2800 with a grace period of 25 percent. Initial inspections that are completed more than 12 months after license issuance are also included in the 10 percent calculation.
- (b) Inspection findings are often not communicated to the licensee within 30 calendar days after all inspection related information has been obtained, and an inspection has been determined to be completed..
- (c) Some Reciprocity inspections are not performed in a manner that meets requirements identified in IMC 1220 or alternative reciprocity inspection policy.

3. Unsatisfactory

- (a) More than 25 percent of all Priority 1, 2, or 3 licensees due for inspection over the review period are inspected at intervals exceeding the frequencies identified in IMC 2800 with a grace period of 25 percent. Initial inspections that are completed more than 12 months after license issuance are also included in the 25 percent calculation
- (b) 1Inspection findings are not communicated to the licensee within 30 calendar days after all inspection related information has been obtained, and an inspection has been determined to be completed.
- (c) Reciprocity inspections are not performed in a manner that meets requirements identified in IMC 1220 or alternative reciprocity inspection policy.

C. Common Performance Indicator 3—Technical Quality of Inspections

1. Satisfactory

- (a) IMPEP inspector accompaniments indicate that inspectors are knowledgeable of the requirements for license types being inspected and are able to identify potential health, safety, and security concerns. Inspectors demonstrate proper inspection technique and adherence to established inspection procedures.
- (b) An evaluation of inspection casework indicates that inspections are complete, inspection findings are well founded, and inspection results are reviewed promptly by management.
- (c) Procedures are in place and used to help identify underlying causes and poor licensee performance.
- (d) Followup inspections address previously identified open items and/or past violations.
- (e) 1Inspection findings lead to appropriate and prompt regulatory action.
- (f) 1Supervisors accompany all inspectors on an annual basis.

2. Satisfactory, But Needs Improvement

- (a) IMPEP inspector accompaniments indicate that not all inspectors are fully knowledgeable of the requirements for license type being inspected, and may not be able to identify potential health and safety, and security concerns. Not all inspectors demonstrate proper inspection preparation, technique, and adherence to established inspection procedures.
- (b) Review indicates that some inspections do not address potentially important health and safety concerns or it indicates problems with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.
- (c) An evaluation of inspection casework indicates that findings in inspection reports and inspection files are, not always well founded or well documented.
- (d) Review indicates there is not an appropriate level of management review.
- (e) Review indicates not all inspectors are accompanied by supervisors on an annual basis..
- (f) Followup actions to inspection findings are not always timely.

3. Unsatisfactory

- (a) IMPEP inspector accompaniments indicate that most inspectors were not knowledgeable of the requirements for license type being inspected, and failed to identify potential health and safety, and/or security concerns.
- (b) Inspectors failed to demonstrate proper inspection preparation, technique, and adherence to established inspection procedures.
- (c) An evaluation of inspection casework indicates that inspections frequently fail to address potentially important health and safety concerns or it indicates chronic problems exist with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.
- (d) Adequate procedures are not in place to support the inspection program.
- (e) Inspector accompaniments are not performed on an annual basis.
- (f) 1Followup actions to inspection findings are not timely and/or not appropriate.

D. Common Performance Indicator 4—Technical Quality of Licensing Actions

1. Satisfactory

- (a) Evaluation of licensing casework indicates that license reviews are generally thorough, complete, consistent, and of acceptable technical quality.
- (b) In all cases involving risk significant activities, licensing actions adequately address health and safety issues.
- (c) The majority of all other licensing actions adequately address health and safety issues.
- (d) License reviewers have the proper signature authority for the cases they review independently.
- (e) Special license tie-down conditions are stated clearly and are inspectable.
- (f) Deficiency letters and emails clearly state regulatory positions and are used at the proper time.
- (g) Reviews of renewal applications demonstrate thorough analysis of a licensee's inspection and enforcement history.
- (h) Applicable guidance documents are available to reviewers and are followed.

2. Satisfactory, But Needs Improvement

- (a) Evaluation of licensing casework 1indicates that some licensing actions do not fully address safety and security concerns;

- (b) Evaluation of licensing casework indicates repeated examples of 1problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.
- 3. Unsatisfactory
 - (a) In any licensing action involving risk significant activities, safety and security issues are not adequately addressed;
 - (b) For other licensing actions, licensing actions reviewed frequently fail to address safety and security issues;
 - (c) Evaluation of casework indicates chronic problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.
 - (d) Licenses are signed by reviewers that do not have proper signature authority for the cases they review independently.

E. Common Performance Indicator 5—Technical Quality of Incident and Allegation Activities

- 1. Satisfactory
 - (a) Incident response and allegation procedures are developed, implemented, and maintained.
 - (b) Level of effort is commensurate with potential health and safety significance of an incident or allegation, including on-site investigation of incidents
 - (c) Actions taken are appropriate, well-coordinated, and timely in all cases involving significant health and safety issues and in the majority of all other cases.
 - (d) Investigative procedures are appropriate for the type of incident or allegation.
 - (e) 1Corrective (enforcement or other) actions are adequately identified to licensees promptly, and appropriate followup measures are taken to ensure prompt compliance.
 - (f) Responses to incidents and allegations are conducted by inspectors knowledgeable of the license type, and health and safety concerns identified
 - (g) Followup inspections are scheduled and completed, if necessary.
 - (h) Notifications to the NRC Headquarters Operations Center, Nuclear Material Events Database (NMED) and others, as appropriate, is performed in a timely fashion.
 - (i) Results of allegation investigations are provided to allegers and allegor identities are protected.
- 2. Satisfactory, But Needs Improvement

- (a) Incident response and allegation procedures are in place and practiced in a detailed fashion in all cases involving significant health and safety issues, and/or but not in the majority of all other cases.
 - (b) Performance is marginal in terms of resolving potential public health and safety issues but not as well coordinated, complete, or timely as would be required under the "Satisfactory" performance standard.
 - (c) On-site investigations of incidents are not always performed, when appropriate.
 - (d) Timely notification to the NRC Headquarters Operations Center, NMED, and others, as appropriate, occurs for all incidents involving significant health and safety issues, and/or for the majority of all other incidents.
 - (e) Results of allegation investigations are not always provided to allegeders and allegeder identities are protected.
3. Unsatisfactory
- (a) Review indicates several examples of incident or/ allegation response to be incomplete, inappropriate, poorly coordinated, or not timely in any case involving significant health and safety issues and/or a majority of all other cases. As a result, potential health and safety problems persist.
 - (b) Untimely or lack of notification to the NRC Headquarters Operations Center, NMED, 1, and others, as appropriate, in any case involving significant health and safety issues and/or a majority of all other cases..
 - (c) Results of allegation investigations are often not provided to allegeders and allegeder identities are not protected.

F. Non-Common Performance Indicator 1—Legislation, Regulations, and other Program Elements

1. Satisfactory
- (a) 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.
 - (b) The statutes authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety.
 - (c) The State is authorized through its legal authority to license, inspect, and enforce legally binding requirements such as regulations and licenses.
 - (d) State statutes are consistent with Federal statutes, as appropriate.
 - (e) The State has existing legally enforceable measures, such 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 of agreement material.

- (f) The State has compatible legally binding requirements, regulations, and other program elements in accordance with 1Management Directive (MD) 5.9, "Adequacy and Compatibility of Program Elements for Agreement State Programs," and the current revisions of 1NMSS Procedures SA-201, "Review of State Regulatory Requirements," and SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements," in effect.
 - (g) NRC regulations that should be adopted by an Agreement State for purposes of compatibility or health and safety are in effect within 3 years after the effective date of the NRC's final rule or as approved by the Commission.
 - (h) Other program elements that have been designated as necessary for maintenance of an adequate and compatible program are adopted and implemented by an Agreement State within 6 months of such designation by NRC.
2. 1Satisfactory, But Needs Improvement
- (a) The State has adopted legally binding requirements, regulations, and other program elements in accordance with MD 5.9 and the current revisions of NMSS Procedures SA-201 and SA-200, but there are gaps or conflicts created in the National Material Program due to compatibility or health and safety discrepancies that need to be addressed.
 - (b) Several NRC regulations that should be adopted by an Agreement State are not in effect within 3 years after the effective date of NRC's final rule.
 - (c) Several program elements that have been designated as necessary for maintenance of an adequate and compatible program have been adopted and implemented by the 1Agreement State in a time frame greater than 6 months after such designation by NRC.
3. 1Unsatisfactory
- (a) The State no longer has statutes that authorize it to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under the agreement.
 - (b) The State is not authorized through its legal authority to license, inspect, or enforce legally binding requirements, such as regulations and licenses.
 - (c) State statutes are in conflict with, or do not sufficiently reflect, the scope of Federal statutes.
 - (d) The State does not have existing legally enforceable measures, such 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 of agreement material.

- (e) The State has not adopted legally binding requirements, regulations, and other program elements in accordance with MD 5.9 and the current revisions of NMSS Procedures SA-201 and SA-200 that created gaps or conflicts in the National Material Program.
- (f) A majority of NRC regulations that should be adopted by an Agreement State during the review period are consistently adopted in a time frame so that the effective date of the State requirement is significantly greater (more than a year late) than 3 years after the effective date of the NRC's final rule.
- (g) Most program elements that have been designated "as necessary" for maintenance of an adequate and compatible program have been adopted and implemented by the Agreement States in a time frame significantly greater (more than six 1months late) than 6 months after such designation by the NRC.

G. Non-Common Performance Indicator 2—Sealed Source and Device Evaluation Program

1 Satisfactory

- (a) The technical reviews are performed by staff with proper training and qualifications.
- (b) Qualification criteria for reviewers are established, implemented, and documented.
- (c) Review of a representative sample of SS&D evaluations completed during the review period indicates that product evaluations are thorough, complete, consistent, of acceptable technical quality, and adequately address the integrity of the products under normal conditions of use and likely accident conditions.
- (d) Health and safety issues are properly addressed.
- (e) Registrations clearly summarize the product evaluation and provide license reviewers with adequate information in order to license possession and use of the product.
- (f) Deficiency letters clearly state regulatory positions and are used at the proper time.
- (g) A concurrence review of each application and proposed certificate of registration is performed by a second qualified reviewer or supervisor, and the record indicated that the second reviewer concurs on the finding that the product is acceptable for licensing purposes.
- (h) Applicable guidance documents are followed, unless approval to use alternate procedures is obtained from management.
- (i) Completed registration certificates, and the status of obsolete registration certificates, are clear and are promptly transmitted to NRC, Agreement States, and others, as appropriate.
- (j) Reviewers ensure that registrants have developed and implemented adequate quality assurance and control programs.
- (k) There is a means for enforcing commitments made by registrants in their applications and referenced in the registration certificates by the program.
- (l) The SS&D evaluation program routinely evaluates the root causes of defects and incidents involving SS&D evaluations and takes appropriate actions, including

modifications of SS&D sheets and notification of NRC, Agreement States, and others, as appropriate.

2. Satisfactory, But Needs Improvement

- (a) Some reviewers do not have the proper qualifications and training.
- (b) Review indicates that some SS&D evaluations do not fully address important health and safety concerns or indicates repeated examples of problems with respect to thoroughness, completeness, consistency, clarity, technical quality, adherence to existing guidance in product evaluations, and addressing the integrity of the products.
- (c) Not all registrations clearly summarize the product evaluation and not all provide license reviewers with adequate information in order to license possession and use of the product.
- (d) Reviewers do not follow all appropriate guidance documents.
- (e) The initial and concurrence reviews are not always performed by persons with adequate training.
- (f) Completed registration certificates, and the status of obsolete registration certificates, are not always clear or are not always promptly transmitted to the NRC, Agreement States, and others, as appropriate.
- (g) Not all product evaluations include an evaluation of proposed quality assurance and control programs.
- (h) 1Commitments made by registrants in their applications, and referenced in the registration certificates, cannot be enforced for all registrations.
- (i) The SS&D evaluation program does not fully evaluate the root causes of all defects and incidents involving SS&D evaluations, or when performed, the programs do not always take appropriate actions, including notification of NRC, Agreement States, and others, as appropriate.

3. Unsatisfactory

- (a) Technical review of the reviewer's evaluation is either not performed or not performed by management or staff having proper qualifications and training.
- (b) Review indicates that SS&D evaluations fail to address important health and safety concerns or indicates chronic problems with respect to thoroughness, completeness, consistency, clarity, technical quality, adherence to existing guidance in product evaluations, and adequately addressing the integrity of the products.
- (c) Registrations do not clearly summarize the product evaluation and do not provide license reviewers with adequate information in order to license possession and use of the product.
- (d) Reviewers do not follow appropriate guidance documents.
- (e) The initial and concurrence reviews are not performed by persons with adequate training.

- (f) Completed registration certificates, and the status of obsolete registration certificates, are unclear and are not promptly transmitted to the NRC, Agreement States, and others, as appropriate.
- (g) Product evaluations do not include an evaluation of proposed quality assurance and control programs.
- (h) Commitments made by registrants in their applications, and referenced in the registration certificates, cannot be enforced.
- (i) The review has identified potentially significant health and safety issues linked to a specific product evaluation.
- (j) The SS&D evaluation program does not ensure evaluation of the root causes of defects and incidents involving SS&D evaluations, or if performed, does not ensure appropriate actions are taken, including notification of NRC, Agreement States, and others, as appropriate.

4. Rating N

Special conditions exist that provide adequate justification for not conducting an evaluation and providing a rating for this subelement. For example, cases in which an Agreement State currently may have SS&D evaluation authority but is not performing any SS&D reviews. In such cases, the program should commit in writing to having an SS&D evaluation program in place (as described in Section (C)(2) of Part II) before performing evaluations.

H. Non-Common Performance Indicator 3—Low-Level Radioactive Waste Disposal Program

1. Satisfactory

- (i) 1Review indicates that the qualifications of the technical staff are commensurate with expertise identified as necessary to regulate a low-level radioactive waste disposal facility and consistent with the State's training and qualification program.
- (ii) 1The management has developed and implemented a training program for staff.
- (iii) Staffing trends that could have an adverse impact on the quality of the program are tracked, analyzed, and addressed. 1Review indicates that the qualifications of the technical staff are commensurate with expertise identified as necessary to regulate a low-level radioactive waste disposal facility and consistent with the State's training and qualification program.
- (iv) 1The management has developed and implemented a training program for staff.
- (v) Staffing trends that could have an adverse impact on the quality of the program are tracked, analyzed, and addressed.

- (vi) Low-level radioactive waste disposal licensees are inspected at regular intervals in accordance with frequencies prescribed in NRC Inspection Manual, Chapter 2800.
- (vii) Deviations from these schedules are normally coordinated between working staff and management.

The inspection findings are communicated to licensees within 30 days, or 45 days for a team inspection.
- (viii) All nonoperational phase inspections are conducted at the State's prescribed frequency.
- (ix) Review team members accompanying inspectors combined with an onsite review of completed inspection files indicate 1inspection findings are well founded and well documented throughout the assessment period.
- (x) 1A review of inspector field notes or completed reports, as appropriate, indicates that inspections are complete and reviewed promptly by supervisors or management.
- (xi) Procedures are in place and are implemented to help identify root causes and poor licensee performance.
- (xii) Followup inspections address previously identified open items and/or past violations.

findings lead to appropriate and prompt regulatory action.

Supervisors accompany all inspectors on an annual basis.

Prelicensing interactions with the applicant are occurring on a regular basis.

Special license tie-down conditions are stated clearly and are inspectable.

Deficiency letters clearly state regulatory positions and are used at the proper time.

Reviews of amendments and renewal applications demonstrate thorough analysis of a licensee's inspection and enforcement history, if applicable.

Applicable guidance documents are available to reviewers and are implemented.

Public hearings in accordance with the State administrative laws have occurred.

Review of certain technical aspects of the low-level radioactive waste license files indicates that the license review is thorough, complete, consistent, and of acceptable technical quality.

Health and safety issues are properly addressed.

An evaluation of the license review process indicates that the process is thorough and consistent.

Meets "Satisfactory" performance for common performance indicator criteria, Section (E)(1) of this part, as applied to the technical quality of incident and allegation activities subelement for the low-level radioactive waste disposal program.

2. Satisfactory, But Needs Improvement

- (a) Some vacant positions are not readily filled.
- (b) There is some evidence of lack of management attention or action to deal with staffing problems.
- (c) Some of the licensing and inspection personnel in the low-level radioactive waste disposal program are not making prompt progress in completing all of the training and qualification requirements.
- (d) The training and qualification standards include areas that could be improved.
- (e) Some of the new staff is hired with little education or experience in physical and/or life sciences; materials licensing and inspection; civil or mechanical engineering; geology, hydrology, and other earth sciences; and environmental science.
- (f) The licensee is inspected at intervals that exceed the NRC Inspection Manual, Chapter 2800, frequency by more than 25 percent.
- (g) All nonoperational phase inspections are conducted at intervals that exceed the State frequencies by more than 25 percent.
- (h) Some of the inspection findings are delayed or are not communicated to licensees within 30 days.
- (i) Review indicates that low-level radioactive waste disposal inspections do not fully address potentially important health and safety concerns or it indicates periodic problems with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.
- (k) Review indicates that findings in inspection reports and inspection files are, on occasion, not well founded or well documented.
- (l) The review does not demonstrate an appropriate level of management review.
- (m) 1Accompaniments of inspectors by supervisors are performed non-systematically and not always annually for all inspectors.
- (n) Followup actions to inspection findings are often not timely.
- (o) Review indicates that some technical aspects of licensing casework do not fully address safety and security concerns.

- (p) Review of licensing casework indicates problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.
 - (q) Meets "Satisfactory, But Needs Improvement" performance for common performance indicator criteria, Section (E)(2) of this part, as applied to the technical quality of incident and allegation activities subelement for the low-level radioactive waste disposal program.
3. Unsatisfactory
- (a) There is significant staff turnover relative to the size of the program which causes performance issues under this indicator.
 - (b) Most vacant positions are not filled for extended periods which causes performance issues under this indicator.
 - (c) There is little evidence of management attention or actions to deal with staffing problems.
 - (d) Most of the licensing and inspection personnel are not making prompt progress in completing all of the training and qualification requirements.
 - (e) New staff members are hired without having education or experience in physical and/or life sciences; materials licensing and inspection; civil or mechanical engineering; geology, hydrology, and other earth sciences; and environmental science.
 - (f) The licensee is inspected at intervals that exceed the NRC Inspection Manual, Chapter 2800, frequency by more than 100 percent.
 - (g) Nonoperational phase inspections are conducted at intervals that exceed the State frequencies by more than 100 percent.
 - (h) Most inspection findings are frequently delayed.
 - (i) Review indicates that inspections fail to address potentially important health and safety concerns or it indicates chronic problems exist with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.
 - (j) Accompaniments of inspectors are not performed annually for all inspectors.
 - (k) Followup actions to inspection findings are not timely and appropriate.
 - (l) Review indicates that technical aspects of the licensing actions fail to address important safety and security concerns.
 - (m) Review of licensing casework indicates chronic problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.

- (n) Public hearings are not consistent with State administrative law or fail to address aspects of the licensing of a low-level radioactive waste disposal facility.
- (o) Meets "Unsatisfactory" performance for common performance indicator criteria, Section (E)(3) of this part, as applied to the technical quality of incident and allegation activities subelement for the low-level radioactive waste disposal program.

4. Rating N

Special conditions exist that provide adequate justification for not conducting an evaluation and providing a rating for this subelement. For example, NRC has not required Agreement States to have a program for licensing a low-level radioactive disposal facility until such time as the State has been designated as a host State for such a facility. When an Agreement State has been notified or becomes aware of the need to regulate a low-level radioactive disposal facility, it is expected to put in place a regulatory program as described in Section (C)(3) of Part II.

I. Non-Common Performance Indicator 4—Uranium Recovery Program

1. Satisfactory

- (a) Review indicates that the qualifications of the technical staff are commensurate with expertise identified as necessary to regulate uranium recovery facilities and consistent with the State's training and qualification program.
- (b) The management has developed and implemented a training program for staff.
- (c) Staffing trends that could have an adverse impact on the quality of the program are tracked, analyzed, and addressed.
- (d) Uranium recovery licensees are inspected at regular intervals in accordance with frequencies prescribed in NRC Inspection Manual, Chapters 2801 and 2600.
- (e) Deviations are generally the result of decisions that consider the risk of licensee operation, past licensee performance, and the need to temporarily defer the inspection(s) to address more urgent or more critical priorities.
- (f) There is a plan to reschedule any missed or deferred inspections on a basis established for not rescheduling.
- (g) Inspection findings are communicated to licensees at the exit briefings and confirmed formally in writing in 30 days, or 45 days for a team inspection.
- (h) Licensing history and status are incorporated into the inspection program as demonstrated through accompaniments and procedures in place.
- (i) 1A review of inspector field notes or completed reports indicates that inspections are complete and reviewed promptly by supervisors or management.

- (j) Procedures are in place and implemented to help identify root causes and poor licensee performance. Followup inspections address previously identified open items and/or past violations.
- (k) Findings lead to appropriate and prompt regulatory action.
- (l) Supervisors accompany all inspectors on an annual basis.
- (m) Review of completed licenses and a representative sample of licensing files indicates that license reviews are thorough, complete, consistent, and of acceptable technical quality.
- (n) Health, safety, and environmental issues are properly addressed.
- (o) License reviewers have the proper signature authority for the cases they review.
- (p) Special license tie-down conditions are stated clearly and are inspectable.
- (q) Deficiency letters clearly state regulatory positions and are used at the proper time.
- (r) Reviews of renewal applications demonstrate thorough analysis of a licensee's inspection and enforcement history.
- (s) Applicable guidance documents are available to reviewers and are followed
- (t) Meets "Satisfactory" performance for common performance indicator criteria, Section (E)(1) of this part, as applied to the technical quality of incident and allegation activities subelement for the uranium recovery program.

2. Satisfactory, but needs improvement

- (a) Some vacant positions, necessary for continued program effectiveness, are not readily filled.
- (b) There is some evidence of lack of management attention or action to deal with staffing problems.
- (c) Some of the uranium recovery licensing and inspection personnel are not making prompt progress in completing all of the training and qualification requirements.
- (d) The training and qualification standards include areas that could be improved.
- (e) Some of the new staff are hired with little education or experience in physical and/or life sciences; materials licensing and inspection; civil or mechanical engineering; geology, hydrology, and other earth sciences; and environmental science. Satisfactory, But Needs Improvement
- (f) The licensees are inspected at intervals that exceed the NRC Inspection Manual, Chapter 2801, frequencies for conventional uranium mills or the NRC Inspection Manual, Chapter 2600, frequencies for in situ leach facilities by more than 25 percent.
- (g) Some of the inspection findings are delayed or not communicated to licensees within 30 days.
- (h) Review indicates that uranium recovery inspections occasionally do not address potentially important health, safety, and environmental concerns or it indicates periodic problems with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.
- (i) Review indicates that findings in inspection reports and inspection files are, on occasion, not well founded or well documented, and the review does not demonstrate an appropriate level of management review.

- (j) Some accompaniments of inspectors by supervisors are not performed annually.
- (k) Followup actions to inspection findings are often not timely.
- (l) Review of licensing casework indicates that some technical aspects of licensing casework do not fully address health and safety and security concerns.
- (m) Review of licensing casework or indicates problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.
- (n) Meets "Satisfactory, But Needs Improvement" performance for common performance indicator criteria, Section (E)(2) of this part, as applied to the technical quality of incident and allegation activities subelement for the uranium recovery program.

3. Unsatisfactory

- (a) There is significant staff turnover relative to the size of the program which results in performance issues under this indicator.
- (b) Most vacant positions are not filled for extended periods which causes performance issues under this indicator.
- (c) There is little evidence of management attention or action to deal with staffing problems.
- (d) Training program is not developed or implemented.
- (e) Licensing and inspection personnel are not making prompt progress in completing all of the training and qualification requirements.
- (f) New staff members are hired without having education or experience in physical and/or life sciences; materials licensing and inspection; civil or mechanical engineering; geology, hydrology, and other earth sciences; and environmental science. Review team members accompanying inspectors combined with an onsite review of a representative cross-section of completed inspection files indicates inspection findings are well founded and well documented throughout the assessment period.
- (g) The licensees are inspected at intervals that exceed the NRC Inspection Manual, Chapter 2801, frequencies for conventional uranium mills or NRC Inspection Manual, Chapter 2600, frequencies for in situ leach facilities by more than 100 percent.
- (h) Inspection findings are delayed.
- (i) Review indicates that uranium recovery inspections fail to address potentially important health, safety, and environmental concerns or it indicates chronic problems exist with respect to completeness, adherence to procedures, management review, thoroughness, technical quality, and consistency.

Accompaniments of inspectors are not performed.

- (j) Followup actions to inspection findings are not timely and appropriate.
- (k) Review of licensing casework indicates that technical aspects of the licensing actions frequently fail to address important health and safety and security concerns.
- (l) Review of licensing casework indicates chronic problems with respect to thoroughness, completeness, consistency, clarity, technical quality, and adherence to existing guidance in licensing actions.

- (m) Meets "Unsatisfactory" performance for common performance indicator criteria, Section (E) (3) of this part, as applied to the technical quality of incident and allegation activities subelement for the uranium recovery program.
- 4. Rating N
Special conditions exist that provide adequate justification for not conducting an evaluation and providing a rating for this subelement.

IV PROGRAMMATIC ASSESSMENT

A. General

1. 1A management review board (MRB) will make the overall assessment of each NRC region's or Agreement State's program. Information considered by the MRB includes the proposed final report, recommendations prepared by the team that conducted the review of that region or State, information from periodic meetings in accordance with NMSS Procedure SA-116, "Periodic Meetings Between IMPEP Reviews," and any unique circumstances. The overall assessment will also include a consideration of information provided by the region or State at the MRB meeting. In addition to a recommended overall finding, the proposed final report will contain the team's recommendations for each common indicator and each applicable non-common indicator for both Agreement States and NRC regions. The MRB may also direct changes in the level of program oversight and/or the frequency of IMPEP reviews. The MRB may direct followup IMPEP reviews, focused IMPEP reviews or adjust the periodic meeting frequency as a means to assess progress on performance weaknesses. For periodic meetings, the MRB will convene as a special MRB to receive a briefing on periodic meeting outcomes and deliberate next actions. For IMPEP reviews, including followup and focused IMPEP reviews, the MRB convenes to deliberate performance indicator ratings, adequacy and compatibility findings, the frequency and type of the next review as well as implementation or discontinuance of monitoring, heightened oversight, probation, and suspension.
2. The MRB will consist of a group of senior NRC managers, or their designees,
 - (a) Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs as Chair
 - (b) Director, Office of Nuclear Material Safety and Safeguards
 - (c) General Counsel
 - (d) Regional Administrator
3. 1The Organization of Agreement States also will be invited to specify a representative to serve as a member of each MRB, as a non-voting Agreement State liaison. In this capacity, the State 1representative will receive applicable documentation and engage in all MRB

discussions. The Agreement State liaison does not have voting authority since this function is reserved solely to the NRC. The Agreement State liaison representative is expected to provide an Agreement State perspective on any matter that is voted on by the MRB.

4. Representatives from other NRC offices may be invited by the Director of NMSS to serve as a non-voting member of an MRB for their expertise on a specific topic.
5. For an NRC region, the MRB will assess only the adequacy of the program to protect public health and safety. For an Agreement State program review, the MRB will assess both adequacy and compatibility.
6. The MRB should consider the following actions when considering programmatic performance of an NRC Regional or Agreement State program:
 - (a) If the MRB finds that the loss in staff during the second half of the review period will likely lead to less than satisfactory finding for one or more performance indicator with the next year, then the MRB should strongly consider issuing a recommendation in the Technical Staffing and Training performance indicator;
 - (b) If a program entering the current review period with significant staffing vacancies, backlog in inspections or licensing actions or overdue regulations (reflective of less than satisfactory finding in the appropriate performance indicator), and by the end of the end of the current review period, all vacancies are filled, and backlogged actions or overdue regulations are completed along with those due during the current review period, then the MRB should give strong consideration for a satisfactory rating for the current review period for the appropriate indicator.

B. 1Adequacy Findings for Agreement State Programs

1. Finding 1—Adequate To Protect Public Health and Safety
 - (a) If the MRB finds that a State program is satisfactory for all performance indicators, the State's program will be found adequate to protect public health and safety.
 - (b) If the MRB finds that a State program is satisfactory with improvement needed for one or two performance indicators and is satisfactory for all remaining performance indicators, the MRB should consider whether the State's program is adequate or adequate with improvement needed.
2. Finding 2—Adequate To Protect Public Health and Safety but needs improvement
 - (a) If the MRB finds that a State program is satisfactory with improvement needed for one or two performance indicators, one of which is Technical Staffing and Training, and is satisfactory for all remaining performance indicators, the MRB should consider whether the State's program is adequate with improvement needed.
 - (b) If the MRB finds that a State program protects public health and safety but is unsatisfactory for one or more performance indicators or satisfactory with

improvement needed for three or more performance indicators the MRB should give strong consideration to finding the State's program adequate with improvement needed.

- (c) In cases in which previous recommendations associated with indicator findings with needed have not been addressed for a significant period of time beyond the originally scheduled date, the MRB also may find that the program is adequate with improvement needed.

3. Finding 3—Not Adequate To Protect Public Health and Safety

If the MRB finds that a State program is not capable of reasonably ensuring public health and safety for any reason, the MRB will find that the State's program is not adequate to protect public health and safety.

C. Compatibility Findings for Agreement State Programs

1. Finding 1—Compatible

- (i) If the MRB finds that a State program is satisfactory or satisfactory, but needs improvement-with-improvement-needed for the performance indicator Legislation, Regulations and other Program Elements, the MRB will find the program compatible; or 1
- (ii) The MRB determines that a State program does not create conflicts, gaps, or disruptive duplication in the collective national effort to regulate materials under the Atomic Energy Act, the MRB will find the program compatible.

2. Finding 2—Not Compatible

- (i) If the MRB finds that a State program is unsatisfactory for the performance indicator Legislations, Regulations and other Program Elements, the MRB will find the program not compatible; or
- (ii) The MRB determines that a State program creates unnecessary gaps, conflicts, or disruptive duplication in the collective national effort to regulate materials under the Atomic Energy Act, the MRB will find the program not compatible.

D. Adequacy Findings for NRC Regional Programs

The MRB adequacy findings for NRC regional programs will be the same as those listed above for Agreement States.

E. Guidance for MRB Determinations for Agreement State Programs

For most Agreement State reviews, no action other than issuance of the final IMPEP report is needed. For those infrequent reviews where additional action is needed, the following alternatives should be considered:

1. Monitoring

When performance concerns in a program result in, or could result in, less than fully satisfactory performance for one or more performance indicators, monitoring by NRC will be considered by the MRB in accordance with NMSS Procedure SA-122, "Heightened Oversight and Monitoring." Monitoring is an informal process that allows the 1NRC to maintain an increased level of communication with an Agreement State program.

2. 1Heightened Oversight

When performance concerns in a program result in one or more of the common and non-common performance indicators are found to be unsatisfactory and/or a significant number of common and non-common performance indicators are found to be satisfactory, but needs improvement, heightened oversight by the NRC will be considered by the MRB in accordance with NMSS Procedure SA-122, "Heightened Oversight and Monitoring." Heightened oversight is a formal process and include requests for an Agreement State program improvement plan, periodic Agreement State progress reports, periodic NRC/Agreement State conference calls, and a followup review, or full review where appropriate.

3. Probation

- (a) The MRB will consider probation for an Agreement State using the NMSS Procedure SA-113, "Placing an Agreement State on Probation," as a reference. Probation is appropriate for MRB consideration when the finding for an Agreement State is adequate, but needs improvement, or is not compatible and when any of the following circumstances occur:
- (i) An Agreement State has been on heightened oversight or monitoring which has not resulted in necessary program improvements;
 - (ii) 1Previously identified programmatic deficiencies have gone uncorrected for a significant period of time beyond which 1the corrective actions had been originally scheduled for completion and the NRC is not confident of the State's ability to correct such deficiencies in an expeditious and effective manner; or
 - (iii) Agreement State has repeatedly been late in adopting required regulations or other legally binding requirements and the NRC is not confident of the State's ability to correct such deficiencies in an expeditious and effective manner.
 - (iv) Inability or difficulty in adopting regulations that could result in significant impacts across State boundaries or allow licensees to be subject to less stringent

requirements than the NRC requirements determined to be necessary to satisfy compatibility criteria.

- (v) Repeated failure to identify design deficiencies in followup analysis of events or incidents involving sealed sources and devices;
- (vi) Failure to adequately respond to multiple incidents which may affect public health and safety;
- (vii) Inability to retain skilled staff, resulting in an increased backlog in inspections and deficiencies in the technical quality of inspection and licensing programs; or

4. Suspension

- (a) The MRB will consider suspension of an agreement if immediate action is required to protect public health and safety, or if the State has not complied with one or more of the requirements of Section 274 of the Atomic Energy Act of 1954, as amended. In accordance with NMSS Procedure SA-114 "Suspension of a Section 274b Agreement" or SA-112 "Emergency Suspension of a Section 274b Agreement," the MRB will consider recommending suspension of all or part of its agreement when any of the following conditions occur:
 - (i) The MRB finds that program deficiencies related to either adequacy or compatibility require immediate NRC action;
 - (ii) The State radiation control program has not complied with one or more requirements of the Atomic Energy Act (i.e., the State program is not compatible with the NRC program and the State has refused or is unable to address those areas previously identified as compatibility concerns) and the lack of compatibility is disruptive to the national program conducted by NRC and Agreement States for the regulation of material under the Atomic Energy Act; or
 - (iii) An emergency situation arises and the State has failed to, or is prevented from, taking steps necessary to protect public health and safety.
- (b) Suspension, rather than termination, will be the preferred option in those cases in which the MRB believes that the State has provided evidence that the program deficiencies are temporary and that the State is committed to implementing program improvements.

5. Termination

- (a) The MRB will consider termination for an Agreement State in accordance with NMSS Procedure SA-115, "Termination of a Section 274b Agreement," when any of the following circumstances occur:
 - (i) The State radiation control program is found to be not adequate to protect public health and safety and no compensating program has been implemented;

- (ii) The State has been on probation and has failed to respond to NRC concerns regarding the State's ability to carry out a program to protect public health and safety;
 - (iii) The State radiation control program is not compatible with the NRC program and the State has refused, or is unable, to address those areas previously identified as compatibility concerns and the noncompatibility is significantly disruptive to the national program among NRC and Agreement States for the regulation of material under the Atomic Energy Act; or
 - (iv) At the request of the Governor of an Agreement State.
- (b) The following are examples of situations in which the MRB will consider recommending initiating formal procedures to terminate an agreement. This list is not all-inclusive and other situations may require consideration.
- (i) Significant loss of staff, which includes number of staff or those with critical skills coupled with a State's inability to hire appropriate replacements;
 - (ii) Continual problems that manifest in the State's inability to perform adequate inspections or issue appropriate licenses;
 - (iii) Inability to adopt compatible program elements over a significant period of time (years) and nationally disruptive regulatory program conflicts, gaps, or duplication exists; or
 - (iv) 1Continued probationary or suspension status for a State program beyond the period originally established in the program improvement plan.

F. Guidance for MRB Determinations for NRC Regional Programs

If performance concerns are identified in an NRC materials program by an IMPEP review, the same criteria for an Agreement State determination should be used by the MRB (i.e., that a program is not adequate to protect public health and safety or is adequate, but needs improvement). Program monitoring, heightened oversight, probation, suspension, and termination are not applicable to NRC materials programs. The NRC must implement immediate action to correct materials program deficiencies that are similar to those that would warrant probation, suspension, or termination actions for an Agreement State. Significant weaknesses or deficiencies in the program that could affect public health and safety or program deficiencies will be addressed by adjustment of priorities and redirection of resources.

II. 1GLOSSARY

It is necessary to note that some Agreement States or NRC may not define these terms identically. In such cases, the review team will highlight any differences in its review but draw its conclusions

and make its assessments based on the definitions used by that State or NRC at the time of the review.

Allegation. A declaration, statement, or assertion of impropriety or inadequacy associated with regulated activities, the validity of which has not been established. This term includes all concerns identified by sources such as the media, individuals, or organizations, and technical audit efforts from Federal, State, or local government offices regarding activities at a licensee's site. Excluded from this definition are matters being handled by more formal processes such as 10 CFR 2.206 petitions, hearing boards, appeal boards, and so forth.

Complex program.

Concurrence Review. A quality assurance review is an evaluation of the initial safety review and must be performed by a different qualified reviewer. It does not need to be performed to the same level of detail as the initial review. The depth of quality assurance review should be commensurate with the complexity of the application and the potential risks associated with the use of the source or device. This review should ensure that the proposed product meets all applicable regulations and requirements and that appropriate health and safety concerns have been addressed and that the device will be safe under the proposed conditions of use and likely accident situations. The quality assurance review should also ensure that the registration certificate for the source or device is accurate and that it provides information essential for proper licensing of the product.

1Incident. An event or condition that has the possibility of affecting public health and safety such as described in 10 CFR or equivalent regulations. Office of State and Tribal Programs Procedure SA-300, "Reporting Material Events," includes a listing of NRC reporting requirements in Title 10.

Materials Inspection. The definitions in 10 CFR 170.3, and in NRC Inspection Manual Chapter 2800, should be used to determine what constitutes an inspection. In addition, Agreement State hand delivery of new licenses may constitute initial inspections. The term includes both routinely scheduled and reactive inspections.

Materials Licensing Action. Reviews of applications for new byproduct materials licenses, license amendments, renewals, and license terminations.

Overdue Priority Inspections. . A Priority license will be considered overdue for inspection in the following cases:

- A new licensee that has not been inspected within 12 months of license issuance.
- An existing Priority 1, 2 or 3 license is more than 25 percent beyond the interval defined in NRC Inspection Manual Chapter 2800
- 1Overdue inspections will not be determined on the basis of any inspection frequencies established by States or regions that are more stringent than those contained in NRC Inspection Manual Chapter 2800.