SUMMARY OF COMMENTS ON DRAFT DOCUMENTS TO INCORPORATE THE INCREASED CONTROLS INTO THE INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP)

I. Sent to the Agreement States for Comment: December 5, 2005 (STP-05-088)

Comments/Dated: Texas - 12/13/05 and 12/14/05 (e-mails)
Washington - 12/14/05 (e-mail)
Illinois - 1/5/06 (e-mail)
Tennessee - 1/5/06 (e-mail)

Response to/Resolution of Comments:

Texas

Temporary Procedure SA-XXX

Comment 1:
I. Intro - This is very wordy and hard to read --more than 50 words in a one sentence paragraph!

Response:
Some text has been eliminated and/or rearranged for easier reading without changing the desired message. The Introduction now reads as follows:

> This document describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to monitor and evaluate actions taken by NRC Regional and Agreement State materials programs ~~and the Agreement States~~ to implement the increased controls for licensees authorized to possess sources containing quantities of concern ~~in response to the Commission's approval of the Transition Plan~~.

Comment 2:
Paragraph V.A.1.d. Seems redundant to V.A.1.b. & c.

Response:
Although the language in V.A.1.d. is similar to the language in V.A.1.b. and c., we feel that it is necessary to clearly identify each of the four distinct monitoring periods established in this section. No changes will be made to the document based on this comment.

Comment 3:
C.1. page 4 and 5 - Step-wise progression Comment: Should there be some timeframes for the progression - such as within 10, 30 or some number of days, there will be a progression to the next step? Page 6 - end of paragraph mentions timeframes but none are defined.

Response:
We intentionally did not define specific timeframes for each step of the progression. Depending on the severity of the issue, immediate escalation may be mandatory. By not speficially defining timeframes, the NRC has the greatest flexibility to handle each individual situation appropriately.

Comment 4:
C.1.d. page 5....adequate resources be allocated to the actions required....."if resources are needed" should be added. If resources are the problem, then they should be added. However, resources might not fix every problem. Resources might not always be the problem -- What if attitude, training or otherwise were the problem and not the resources? Don't automatically ask for resources.

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 5:
C.1.d. and e. Comment: What is "adequate?" How many, what, etc. is not defined.

Response:
“Adequate” has been replaced with “additional” in both instances of the word. “Adequate” denoted a degree of subjectiveness. “Additional” more appropriately implies the intended message of the two paragraphs.

Comment 6:
D.1. page 6 - Comment: 10 working days rather than one week might be a more reasonable deadline. "From the date of the letter" is problematic due to mail delays, etc. Might say from the date of receipt of the letter and have it sent certified mail. This comment applies to Appendix A also.

Response:
We appreciate the comment and agree that more than one week is more reasonable due to weekends, mail delays, etc. However, to keep this procedure consistent with other Office of State and Tribal Programs procedures, “one week” was changed to “15 days.”

Comment 7:
What is the criteria that will be used to determine a state has failed to implement the increased controls? Will all inspections of increased control need to be completed, 90%, 95%, or what? I don’t believe this is specified in any of the documents at this time. Since they [NRC] will be doing real time review of the implementation, I believe that the criteria for failure needs to be very clear.

Response:
We believe that not defining exact “criteria for failure” provides the NRC the greatest flexibility in its oversight role. It will allow the NRC to evaluate each State that does not completely implement the increased controls in the specified timeframes on a case-by-case basis to determine the root cause of the inability to complete the implementation in a timely manner.

Temporary Instruction 001

Comment 8:
B. 1. a. - page 3 Reviewer should evaluate and document that all licensees subject to increased controls are identified -- Comment, not that they can do much about it: This might be rather

difficult, if not impossible, for the reviewer to determine, depending on how records are kept, etc. (Same comments for D.1.a. on page 4--all have been identified.)

Response:
We have removed the word “all” in both instances to allow a degree of flexibility.

Comment 9:
Paragraph V.B.1.c.i. indicates Higher risk licensees should be inspected within the first year after implementation of the requirements. To be more complete could say something like "... and within 6 months for new licenses."

Response:
A new paragraph (V.B.1.c.iv.) was added to address new licenses issued during the initial inspection phase and thereafter. The new paragraph reads as follows:

> iv. New licenses subject to increased controls issued during the initial inspection phase and thereafter should be inspected for their implementation of the increased controls within the first year in conjunction with their first routine inspection.

Comment 10:
C.1.c. page 3 - Sensitive licensee information -- what does "sensitive" mean -- where is that defined?

Response:
In this instance, “sensitive” means security-related information, other than classified or safeguards information, that could be useful, or could reasonably be expected to be useful, to a terrorist in a potential attack. Examples of this information that may be found in a materials license file include location of radioactive materials, site drawings, security plans, and security event and/or malevolent event response plans.

Comment 11:
C.2. page 4 - ...ensure that approximately 25% of the inspector accompaniments performed involve licensees subject to increased controls, if possible. Comment: What does "if possible" mean? Do they mean, if there are enough of them to make up 25% of the total? Perhaps it should be clarified. Otherwise, an state could come up with lots of reasons why it wasn't "possible" to do.

Response:
Paragraph V.C.2 is in regard to inspector accompaniments performed as part of an IMPEP review. The “when possible” provides a degree of flexibility to the team member performing the accompaniments. A number of factors are considered when selecting individuals and licensees for the accompaniments. We understand that it will not always be possible for the IMPEP team member to perform an accompaniment of an individual at a licensee subject to the increased controls. No change was made to the procedure based on this comment.

Comment 12:
Paragraph V.C.2. seems to have a mis-worded sentence: "In addition to the guidance for inspector accompaniments... the principal reviewer of alternate team member should ensure ..." Doesn't read right to me ...

Response:
This was an inadvertent error. The sentence should read "...the principal reviewer **or** alternate team member should ensure..." The procedure has been revised accordingly.

Washington

Comment 1:
The timing of steps in Temporary Procedure SA-XXX is based largely on "implementation" of the increased control requirements. Since implementation can occur "within six months" of the legally-binding requirements or Orders which in turn could have occurred over several months, the actual date of implementation will vary not only from state to state but from licensee to licensee. It would be easier to administer this procedure if the "end dates" are used. Orders were required by December 2, 2005, therefore implementation is required by June 2, 2006, higher risk licensees must be inspected by June 2, 2007, and all increased control licensees must be initially inspected for security measures by June 2, 2009.

Response:
In order to treat all States and NRC Regions fairly, we must use dates for comparison to the established timeframes in reference to the date of issuance of the increased controls. Since issuance dates are maintained on file with STP, this can be achieved easily. No change was made to the procedure based on this comment.

Comment 2:
SA-XXX calls for "real-time monitoring" by STP during the "entire initial implementation phase" (understood by us to be now until June 2, 2006). The MRB will meet "after each of the distinct monitoring periods" and, apparently, as needed "to ensure completion of implementation within the expected timeframes." In order to perform the latter, STP will need to continue "real-time monitoring" through June 2, 2009 in order to provide the MRB with timely information otherwise action cannot be taken to ensure completion.

Response:
The entire initial implementation phase refers to the timeframe of issuance of the increased controls to the point at which all initial inspections are complete. Theoretically, that date will be June 2, 2009. However, the end of the initial implementation period will vary amongst the States and NRC Regions. "Real-time" monitoring will be conducted through brief telephonic contact, periodic meetings, and IMPEP reviews. No change was made to the procedure based on this comment.

Comment 3:
The reference to "real-time monitoring" should be quantified. Frankly, every contact you [NRC] make with the program, takes time away from completing the required task. Please specify exactly how much interaction you will be requiring of us [the Agreement States]. True "real-time" monitoring is not warranted. We suggest that you send a monthly request for a status

report and implement a weekly request if needed when a deadline approaches. Phone calls or e-mail follow-up if issues arise.

Response:
We do not intend for the "real-time monitoring" to be intrusive or disrupt the workload of the Agreement States or the Regions. "Real-time monitoring" in the temporary procedure refers to monitoring methods that will be used as the deadline approaches during one of the distinct monitoring periods or for those Agreement States that will not have an IMPEP review or periodic meeting during the initial implementation period. Contact as part of the "real-time monitoring" will be infrequent yet still retain the ability to early identify any potential problems. No change was made to the procedure based on this comment.

Comment 4:
The Temporary Instruction 001 brings to light training issues including availability of training, timing of training, and guidance for in-house training alternatives. We are very concerned that there will be insufficient training provided by NRC in a timely manner to allow us to adequately inspect increased control licensees within the first year of implementation (for higher risk licensees). We are also concerned that there is no guidance on course content and adequacy criteria for alternative security training courses. At this point, we believe the only acceptable training is that provided by NRC and that any alternative courses will come too late for us to attend in time for the initial round of high risk licensees. Additional offerings of the NRC security training are sorely needed and quickly.

Response:
Availability of training will not be addressed in this procedure. No change was made to the procedure based on this comment.

Comment 5:
Criteria for judging the adequacy of alternative security training courses is needed.

Response:
By not providing criteria for alternative training, individual Agreement States or Regions have flexibility to tailor in-house training to their specific needs. Other than documenting the scope of alternative training, we do not intend to individually evaluate in-house training that may be put on by each of the Agreement States. IMPEP is a performance-based process. Any weaknesses or gaps in the alternative training will most likely be brought to light by the technical quality of licensing or inspection casework. Only if the alternative training is identified as a root cause of other observed weaknesses will a reviewer examine or evaluate the adequacy of the alternative training. No change was made to the procedure based on this comment.

Comment 6:
While the two documents under review are "needed," the priority for even the few dollars spent on them would be better spent on providing additional security training opportunities.

Response:
Availability of training will not be addressed in this procedure. No change was made to the procedure based on this comment.

Illinois

Comment 1:
Increased Controls have already proven to be a very labor-intensive effort and will only continue to do so until all inspections are completed. Resources spent on Increased Control efforts reduce our available resources for our other IMPEP common and non-common performance indicators, so we are very sensitive to these demands. As such, availability of NRC provided training in a timely manner that will allow us to adequately inspect the higher risk increased controls licensees within the first year of implementation is our major concern. Granted alternative training is an option, but that option also requires even more use of our limited resources by having to design and implement an alternative training program as well as instruct, evaluate and document training of our staff. Training also should not exclude licensing staff, as is the current policy. Licensing staff have so far been responsible for reviewing and issuing the legal documents for increased controls in most states. It is imperative that adequate and timely NRC training be provided for Agreement State personnel in order to meet the specified time periods for ensuring implementation of increased controls by all affected licensees.

Response:
Availability of training will not be addressed in this procedure. No change was made to the procedure based on this comment.

Comment 2:
We recommend verbage be added to paragraphs V.C.1. (c), (d) and (e) that state that if the NRC representative(s) find the proposed actions to correct the problems adequate, the progressive actions (e.g., letter of support to a State Official above the RCPD in paragraph d., letter of support to the State governor in paragraph e.) will not be necessary, or at least will be delayed, in order to determine if the corrective actions proposed by the radiation control program are effective.

Response:
We agree with this comment. Paragraph (g) has been added to this section. The revised text is as follows:

g. For paragraphs a.-e. of this section, the Agreement State or NRC Regional materials program may propose an action plan in addressing timeliness concerns. If the action plan to correct the timeliness concerns is adequate, the next step in the progression will be delayed or additional action will not be initiated to allow time for the action plan to be implemented and executed. If the action plan is unsuccessful in addressing the timeliness concerns, the step-wise progression will be re-initiated.

Comment 3:
In keeping with NRC's stated goal, we recommend that the ICs be put forth as a rule (supplemented by a guidance document) as soon as possible and replace the orders that have been issued. This would allow for appropriate discussion and clarification of the scope, implementation and long-term goals of the ICs. This will also allow States and NRC to adopt uniform requirements across jurisdictional boundaries. Finally, a clear determination of

compatibility could be made per section V.F.1. of Temporary Instruction 001, as part of the promulgation process.

Response:
NRC is working on a number of security-related rulemakings, some of which may include portions of the increased controls. Completion dates for these rulemakings are indetermined at this time. The temporary instruction will be revised at that time to reflect compatibility determinations and verfication. No change was made to the procedure based on this comment.

Tennessee

Comment 1:
Because of the distribution of these licensees across our long, narrow state, and the uncertainties in future inspector training, we are concerned that there may not be a sufficient number of trained staff to meet the deadline for the higher priority licensees. It would be beneficial to have a better grasp on how many inspectors will be offered training in courses offered after the February course.

Response:
Availability of training will not be addressed in this procedure. No change was made to the procedure based on this comment.

Comment 2:
We concur with Washington State's comment that there is no guidance on course content and adequacy criteria for alternative security training courses, and that additional NRC security training needs to occur quickly so that we can begin to plan for the year at hand. If alternative security training courses are going to be offered, the criteria for such courses should be clarified, and hopefully there could be additional course locations across the country.

Response:
Availability of training will not be addressed in this procedure. Please see the response to Washington Comment 5 in regard to providing criteria for judging the adequacy of alternative training. No change was made to the procedure based on this comment.

II. Sent to the NRC Offices for Comment: December 5, 2005

Comments/Dated: NMSS - 12/9/05 (e-mail)
OGC - 12/16/05 (mark-up)
Region III - 12/30/05 (e-mail)
Region IV - 1/3/06 (e-mail)

Response to/Resolution of Comments:

NMSS

Comment:
In the document "Office of State and Tribal Programs State Agreements Procedures Temporary Instruction 001, Integration of Increased Controls into the Integrated Performance Evaluation Program (IMPEP)" Section IV.A., "Team Leader" it appears that most, if not all, of the information following the first sentence in this section applies to the principal reviewer. Should the team leader also take the NRC Security Inspections Course (or alternate training)? If not, should these sentences be moved to the next section (IV.B)?

Response:
We agree with this comment and the procedure has been advised accordingly.

OGC

Most comments were editorial in nature and the procedure has been revised accordingly. One comment was of legal nature and the procedure has been revised accordingly.

Region III

Temporary Procedure SA-XXX

Comment 1:
Item V.A.1. The NOTE refers to “item a)” We suggest that the wording be changed to: “The timeframe for item a, below, relates to September 2, 2005...”

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 2:
Item V.C.1. The word “meeting” in the first sentence should be changed to “meetings”

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 3:
Item V.C.1.a. Indicate here that the Division of Industrial and Medical Nuclear Safety is part of NMSS.

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 4:
Item V.C.1.c. The NRC Regional materials program director should be defined as the Regional Director, Division of Nuclear Materials Safety.

Response:
We agree with this comment and the procedure has been revised accordingly.

Temporary Instruction 001

Comment 5:
General This document incorporates the assessment of increased controls into the current IMPEP process. It identifies areas to inspect but does not tell how a reviewer may determine whether a program is adequate. We should provide more information on how the IMPEP team will determine if the Region or Agreement State is adequately implementing increased controls.

Response:
IMPEP reviewers should continue to use the criteria found in Management Directive (MD) 5.6. We believe that the existing criteria will suffice to continue to make determinations of adequacy for NRC Regional and Agreement State materials programs and compatibility for Agreement State materials programs since all actions associated with the increased controls will be done under health and safety authority. During the lifetime of use of the temporary instruction we will periodically evaluate the criteria in MD 5.6 to determination its effective. If additional criteria is deemed necessary, we will revise MD 5.6 accordingly. No change was made to the procedure based on this comment.

Comment 6:
Item V.A.1.a. This item discusses the IMPEP team reviewer's assessment of an NRC or Agreement State in-house training alternative to the NRC Security Inspections Course. The criteria for such an alternative are not discussed, making the assessment potentially very difficult. We propose that any "alternative" training programs should be approved by NRC prior to implementation by the State.

Response:
Please see the response to Washington Comment 5 regarding the criteria for judging the adequacy of alternative training.

Comment 7:
Item V.B. In two instances, the title of SA-101 is incorrect. It should read "Status of Materials Inspection Program."

Response:
The procedure has been revised accordingly.

Comment 8:
Item V.C.2. SA-102 was defined earlier and does not need to be defined here.

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 9:
Item V.C.2. The responsibility for this assessment lies with the principal reviewer for this indicator and it should so state. We suggest that the alternate team member option be eliminated.

Response:
The "alternate team member" phrase was incorporated into Item V.C.2 to reflect that the principal reviewer for Technical Quality of Inspections does not always perform the inspector

accompaniments. On occasion, the team leader or another member of the team will perform the inspector accompaniments in place of the principal reviewer. We believe this phrase is necessary to maintain the flexibility of the program. No change was made to the procedure based on this comment.

Comment 10:

Item V.E.1. Incident reporting is the responsibility of NRC Regional materials licensees not the Regional materials program, as is stated.

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 11:
Item V.F.1. The title of SA-107 is incorrect. See the References section for the correct title.

Response:
The procedure has been revised accordingly.

Comment 12:
Item V.F.1.c. This item should indicate that legally-binding requirements were submitted to the NRC for review and approved by the NRC.

Response:
The language in Item V.F.1.c. has been revised to read:

> Rules or alternate legally-binding requirements have been submitted to the NRC for a compatibility review.

Comment 13:
Item VII.3. The title of SA-101 is incorrect.

Response:
The procedure has been revised accordingly.

Region IV

Comment 1:
Introduction: The paragraph states in part that "...evaluate actions taken by NRC Regional materials programs and the Agreement States to ..." Recommend that the sentence read as follows: "...evaluate actions taken by NRC Regional and the Agreement States materials programs to ..."

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 2:
Section III, titled "Background," Page 2: The third paragraph states that ".....the NRC Regional materials programs and Agreement States are expected to have legally-binding requirements or Orders in place for licensees no later than December 2, 2005, ..." The NRC chose to issue public health and safety based Orders for Increased Controls. These Orders were issued by HQ (NMSS?). The regional offices are responsible to conduct inspections to confirm that the licensees have implemented the increased controls or reduced their license limits so that Orders are not required.

Response:
We understand that not all situations will be applicable to both NRC Regional and Agreement State materials programs. We have tried to be sensitive to these instances. Several sections of the temporary procedure and temporary instruction have been changed based on this comment.

Comment 3:
Section IV.A.1. Responsibilities: States in part, "Evaluate status of the implementation of increased controls in NRC Regional materials programs and the Agreement States ..." Recommend that the sentence read as follows: "Evaluate status of the implementation of increased controls in NRC Regional materials programs and the Agreement States materials programs ..." (Similar comment for Section V.A.1. and V.C.1.)

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 4:
Section V, titled Guidance, Page 3: The NOTE in Section V.A.1. states that the time frame for item a) is in relation to September 2, 2005 when STP issued RCPD-05-014 "High Priority: Implementation of Increased Controls." This sentence is confusing. Please consider rewording the sentence as follows, or removing the NOTE from the text: RCPD-05-014, titled "High Priority: Implementation of Increased Controls" and dated September 2, 2005, informed the Agreement State radiation control program directors that both NRC and the Agreement States will need to issue legally binding requirements by December 2, 2005 to implement the increased controls. The period of issuance is September 2 to December 2, 2005.

Response:
We agree with this comment and the procedure has been revised accordingly.

Comment 5:
Temporary Instruction 001, Page 3: Section B, titled Status of the Materials Inspection Program, 1.a. states that the reviewer will evaluate and document that ALL licensees subject to increased controls are identified. We believe that, as stated, the reviewer would need to review all the program's RAM licenses to evaluate whether or not their RAM authorization meets the increased control criteria. In programs that have a small number of licensees, review of **ALL** RAM licenses could be accomplished. However, for programs that have several thousand, or even several hundred, RAM licensees, review of **ALL** could not be accomplished in a reasonable time. Region IV suggests that the reviewer evaluate a sampling of license types. If the reviewer identifies a category of licenses that meet the increased control criteria and have

not been previously identified, the reviewer should document the number and category of licenses.

Response:
See response to Texas Comment 8.

Comment 6:
Temporary Instruction 001, Page 3: Section B. 1. B. instructs the reviewer to evaluate and document the Program's prioritization methodology for ranking licensees for inspections. The instruction needs to specifically reference the guidance developed by the NRC, or provide an example of an acceptable methodology.

Response:
We agree with this comment. A reference to the prioritization methodology developed by the NRC was added to the procedure.

Comment 7:
Temporary Instruction 001, page 4: Section D, titled Technical Quality of Licensing Actions, 1.a. again requires the reviewer to evaluate and document that all licensees meeting the increased control criteria have been identified. This appears to be redundant since the Status of the Materials Inspection Program indicator also addressed confirming that all licensees subject to increased controls are identified. Region IV suggests that the licensing reviewer evaluate a sampling of license types to assess the timeliness of issuance, since the confirmation that licensees subject to increased controls will be identified using the proposed methodology discussed in item 2 of this document. In addition, the licensing reviewer should evaluate and document the program's system for identifying new licensees that will be subject to increased controls.

Response:
See response to Texas Comment 8.