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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

(STP-05-088, December, Program, IMPEP)

December 5, 2005

ALL AGREEMENT STATES, MINNESOTA, PENNSYLVANIA

OPPORTUNITY TO COMMENT ON DRAFT DOCUMENTS TO INCORPORATE THE INCREASED CONTROLS INTO THE INTEGRATED MATERIALS PERFORMANCE EVALUATION PROGRAM (IMPEP) (STP-05-088)

Enclosed for your review and comment are draft documents that will incorporate the requirements of the Transition Plan and the increased controls into IMPEP. The first document, a temporary procedure, describes the process to be used by the U.S. Nuclear Regulatory Commission (NRC) to monitor and evaluate NRC Regional materials programs and the Agreement State's actions in response to the Transition Plan. The second document, a temporary instruction, describes the process to be used by the NRC to evaluate the implementation of increased controls through IMPEP. We would appreciate receiving your **comments* within 30 days** from the date of this letter.

Prior to finalizing these documents, NRC may need to use them as interim guidance. Any lessons learned in the process will be incorporated into the final version.

We are also currently in the process of revising Appendix A of STP Procedure [SA-101](#), Reviewing the Common Performance Indicator, Status of the Materials Inspection Program. This appendix explains the methodology applied to calculating the percentage of overdue inspections in a State. We are working to incorporate inspections of licensees subject to increased control requirements into the current methodology.

If you have any questions regarding this communication, please contact me at 301-415-3340 or the individual named below.

POINT OF CONTACT: Aaron T. McCraw
TELEPHONE: (301) 415-1277

INTERNET: ATM@NRC.GOV
FAX: (301) 415-3502

/RA/

Janet R. Schlueter, Director
Office of State and Tribal Programs

Enclosure: As stated

* This information request has been approved by OMB 3150-0029, expiration 06/30/07. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**OFFICE OF STATE AND TRIBAL PROGRAMS STATE
AGREEMENTS PROCEDURES
TEMPORARY PROCEDURE SA-XXX**

IMPLEMENTATION OF INCREASED CONTROL OF SOURCES

I. INTRODUCTION

This document describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to monitor and evaluate actions taken by NRC Regional 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.

II. OBJECTIVES

- A. To ensure the timely implementation of increased controls by licensees under the jurisdiction of NRC Regional materials programs and Agreement State radiation control programs.
- B. To monitor and evaluate actions by NRC Regional materials programs and Agreement State radiation control programs to implement the increased controls.
- C. To provide guidelines that will be followed by NRC staff when significant delays and/or weaknesses in NRC Regional materials programs or Agreement States are identified in regard to the implementation of increased controls.
- D. To outline processes for Agreement State radiation control programs to request NRC assistance in the implementation of increased controls.

III. BACKGROUND

In an effort to increase the control of certain radioactive materials, the Commission approved an approach to implement increased controls for NRC and Agreement State licensees authorized to possess radioactive materials in quantities of concern. The

increased controls for certain licensees are mandated under the NRC's statutory authority to protect public health and safety. The implementation of the increased controls will be carried out by NRC Regional materials programs and Agreement States for their licensees as an immediate mandatory matter of compatibility.

The Commission has placed a high level of importance on the activities encompassing implementation of the increased controls. Therefore, the status of actions in relation to the increased controls will be periodically monitored and evaluated. The status of the actions in Agreement States and NRC Regional materials programs will be monitored and evaluated through Integrated Materials Performance Evaluation Program (IMPEP) reviews, periodic meetings with Agreement States, and other interactions.

In accordance with the Transition Plan approved by the Commission, 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, and to have completed all initial inspections within three years after the implementation of the increased controls. Licensees are expected to have implemented the requirements of the increased controls within six months from the date of issuance of the legally-binding requirements or Orders. NRC Regional Offices and the Agreement States are expected to have completed the initial inspections of all higher risk licensees within the first year after implementation, based on the Transition Plan approved by the Commission. After initial inspections are completed, affected licensees should be inspected at intervals consistent with NRC Inspection Manual Chapter 2800 or the respective Agreement State equivalent.

IV. RESPONSIBILITIES

A. Management Review Board (MRB):

1. Evaluates the status of the implementation of increased controls in NRC Regional materials programs and Agreement States based on information obtained from IMPEP reviews, periodic meetings, or other interactions as supplied by the NRC's Office of State and Tribal Programs (STP); and,
2. Recommends to the Commission whether emergency suspension, technical assistance, or another form of increased oversight is warranted in cases where timeliness issues or performance weaknesses exist.
3. See STP Procedure SA-106, *The Management Review Board (MRB)* for more information on the membership and responsibilities of the MRB.

B. Director, STP:

Assigns a point of contact in STP to accumulate responses to status update requests from NRC Regional materials programs, with assistance from the Office of Nuclear Materials Safety and Safeguards (NMSS), and Agreement States at the four distinct monitoring phases. That individual will incorporate the gathered information and present it in a report to the MRB for its consideration.

C. Deputy Director, STP:

Signs out the report to the MRB on status of implementation of increased controls, as described above.

V. GUIDANCE**A. Monitoring of Implementation of Increased Controls**

1. STP with assistance from NMSS will formally monitor the status of completion of activities in regard to the increased control requirements in the NRC Regional materials programs and Agreement States through IMPEP, periodic meetings, and other interactions. The information will be collected at four distinct periods during the initial implementation phase. NOTE: The timeframe for item a) is in relation to September 2, 2005 when STP issued RCPD-05-014 "High Priority: Implementation of Increased Controls." December 2, 2005 is 90 days from the date of the above mentioned letter.
 - a. During the period of issuance of legally-binding requirements or orders and immediately following, STP will determine or verify the status of the issuance to affected licensees. The status will be verified through telephonic contact and/or written correspondence.
 - b. Upon one year after implementation, STP will establish the status of the completion of initial inspections of all higher risk licensees as identified through the program's prioritization.
 - c. Upon two years after implementation, STP will determine the progress of the completion of initial inspections through IMPEP reviews, periodic meetings, and/or telephonic contact to determine the program's ability to complete all initial inspections within three years after implementation.

- d. Upon three years after implementation, STP will establish the status of the completion of initial inspections through IMPEP reviews, periodic meetings, and/or telephonic contact.
 2. Throughout the entire initial implementation period, STP will perform real-time monitoring of the status of the implementation of increased controls. If the real-time monitoring identifies timeliness issues or performance weaknesses, that information will be circulated to the MRB and a special session of the MRB will be convened, if necessary.
- B. Evaluation of Implementation of Increased Controls
1. The MRB will convene to discuss the status of the implementation of increased controls based on the information provided by STP in coordination with NMSS. At a minimum, the MRB will meet after each of the distinct monitoring periods described above.
 2. The MRB will evaluate the status of implementation of increased controls and make a determination if action is necessary to ensure the completion of implementation within the expected time frames.
 3. Special sessions of the MRB may be convened to discuss timeliness issues or performance weaknesses identified outside of the distinct monitoring periods described above.
 4. An Organization of Agreement States (OAS) Liaison will be invited to participate in all sessions of the MRB in regard to increased controls. The designated OAS Liaison will not be allowed to participate in the deliberation of the MRB for matters in regard to his/her own State. If during an MRB meeting, the MRB desires to go into an executive session, every effort will be made to include the OAS Liaison.
- C. Identification of Delays in Implementation or Program Weaknesses
1. If the information gathered through IMPEP reviews, periodic meeting, or other interactions with an NRC Regional materials program or an Agreement State indicates that they may require additional time to complete the initial implementation phase or if program weaknesses are identified, the NRC will consider initiating a step-wise progression of action. The step-wise progression is as follows:

- a. For Agreement States, the Director, STP, calls the Radiation Control Program Director (RCPD) to discuss the extenuating circumstances that may be affecting the program's ability to implement the increased controls in a timely manner and to discuss options such as requesting technical assistance from the NRC. For NRC Regional materials programs, the Director of the NRC's Division of Industrial and Medical Nuclear Safety will discuss extenuating circumstances with the program.
- b. A special session of the MRB may be convened to discuss the status of the implementation of increased controls in a specific NRC Regional materials program or Agreement State. The MRB may decide on a course of action consistent with what is necessary to ensure the timely implementation of increased controls.
- c. The Chair of the MRB calls the RCPD or NRC Regional materials program director to discuss extenuating circumstances that may be affecting the program's ability to implement the increased controls in a timely manner, to describe the process for requesting technical assistance from the NRC, and to inform the program of the NRC's consideration of other actions to ensure and facilitate timely implementation.
- d. For Agreement States, the Chair of the MRB sends a letter of support to a State official above the RCPD but below the governor to request that adequate resources be allocated to the actions required by the Transition Plan. For NRC Regional materials programs, the Chair of the MRB will contact the Regional Administrator via telephone or written correspondence to discuss the extenuating circumstances that may be affecting the program's ability to implement the increased controls in a timely manner.
- e. For Agreement States, NRC Chairman sends a letter of support to the State governor to request that adequate resources be allocated to the Agreement State program to ensure the timely implementation of increased controls and the continued protection of public health and safety.
- f. For Agreement States, the Commission exercises their authority granted in Section 274j(2) of the Atomic Energy Act and invokes an emergency suspension. During an emergency suspension, the NRC would reassert regulatory authority over licensees affected by the increased controls. The suspension would remain in place until

the initial implementation of increased controls is complete or the Commission has reason to believe that the Agreement State will be able to complete all required actions within the established timeframes.

D. Letters of Support for Implementation of Increased Controls

1. Letter of support to a State's governor will be sent in accordance with applicable guidance in STP Procedure SA-106, *The Management Review Board (MRB)*, STP Procedure SA-116, *Periodic Meetings with Agreement States Between IMPEP Reviews*, STP Procedure SA-117, *Agreement State Project Officers (ASPOs)*, and STP Procedure SA-122, *Heightened Oversight and Monitoring*. See Appendix A of this Temporary Procedure for a sample letter to the governor.
2. The letter to the governor will request an action plan from the State within one week of the date of the letter. STP will evaluate the State's action plan and supply any necessary information to the MRB or the Commission to determine if additional action should be considered.

E. Invocation of an Emergency Suspension

1. During an emergency suspension, the NRC would only reassert regulatory authority over licensees affected by the increased controls. The NRC may reassert authority over one or more licensees or categories of licensees, as deemed necessary. The process of the emergency suspension will be in accordance with STP Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*.
2. The emergency suspension will remain in place until the initial implementation of increased controls is complete or the Commission has reason to believe that the Agreement State will be able to complete all required actions within the established timeframes.
3. Following cessation of the emergency suspension, the MRB may convene to determine if additional oversight of the Agreement State is needed to ensure progress is being made to complete or maintain the implementation of increased controls without causing degradation in other portions of the program. The MRB may consider placing the Agreement State on Probation, Heightened Oversight, or Monitoring. The additional oversight will be in accordance with STP Procedure SA-113, *Placing an Agreement State on Probation*, and STP Procedure SA-122, *Heightened Oversight and Monitoring*, respectively.

F. Requesting NRC Technical Assistance

1. Agreement States should make their best possible effort to determine occasions when milestones will not be met in a timely manner and notify the NRC. If an Agreement State identifies that milestones will not be met in a timely manner, the Agreement State should contact the NRC to discuss options for technical assistance.
2. Technical assistance requests will be filed in accordance with NRC Management Directive 5.7, *Technical Assistance to Agreement States*.

VI. APPENDICES

- A. Sample Letter to Governor of [State] Regarding Increased Controls

VII. REFERENCES

1. Management Directive 5.7, *Technical Assistance to Agreement States*.
2. RCPD-05-014, "High Priority: Implementation of Increased Controls," dated September 2, 2005.
3. STP Procedure SA-106, *The Management Review Board (MRB)*.
4. STP Procedure SA-112, *Emergency Suspension of a Section 274b Agreement*.
5. STP Procedure SA-113, *Placing an Agreement State on Probation*.
6. STP Procedure SA-116, *Periodic Meetings with Agreement States Between IMPEP Reviews*.
7. STP Procedure SA-117, *Agreement State Project Officers (ASPOs)*.
8. STP Procedure SA-122, *Heightened Oversight and Monitoring*.

Appendix A

OFFICE OF STATE AND TRIBAL PROGRAMS STATE AGREEMENT PROCEDURES TEMPORARY INSTRUCTION 001

Sample Letter to Governor of [State] Regarding Increased Controls

The Honorable [Name]:
Governor of [State]
City, State, zip code

Dear Governor [name]:

In a letter dated September 2, 2005, I informed you that the U.S. Nuclear Regulatory Commission (NRC) approved the implementation of increased controls for certain radioactive material licensees. When implemented by licensees, these controls, which supplement existing regulatory requirements, will provide both the NRC and the Agreement States reasonable assurance that our common objectives of enhancing controls over certain radioactive sources and protecting public health and safety continue to be met.

[State]'s radiation control program has committed to implement the increased controls for affected radioactive materials licensees in your State under the authority of your Section 274b (of the Atomic Energy Act) Agreement with the NRC. Implementation of these controls is a matter of great importance to the NRC and to the Nation. The NRC has established timeframes for each of the phases of the implementation of increased controls and expects all actions to be completed in a timely manner.

Based on information gathered from your State through routine interactions, [State] has failed to meet one or more of the established timeframes. [Discuss specific action(s) that was not met in the established timeframe].

I request that [State] submit an action plan within one week from the date of this letter, detailing how the State will work to meet the established timeframes. This information in addition to the information gathered from [State] through routine interactions with the NRC will be used by a Management Review Board (MRB), composed of NRC managers and an Agreement State program manager who serves as a liaison to the MRB, to determine the appropriate actions that need to be taken by the NRC to ensure timely completion of the implementation of increased controls. Based on the recommendation of the MRB, the NRC may deem it necessary to invoke an emergency suspension under the authority granted to them in Section 274j(2) of the Atomic Energy Act. This suspension may affect all or part of your Section 274b Agreement.

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I appreciate your attention to this matter and your continued support in the collective effort to protect the Nation's public health and safety.

Sincerely,

Nils J. Diaz

cc: [SLO]
[RCPD]

**OFFICE OF STATE AND TRIBAL PROGRAMS STATE AGREEMENTS PROCEDURES
TEMPORARY INSTRUCTION 001**

**INTEGRATION OF INCREASED CONTROLS INTO THE INTEGRATED
PERFORMANCE EVALUATION PROGRAM (IMPEP)**

I. INTRODUCTION

This document describes the process used by the U.S. Nuclear Regulatory Commission (NRC) to evaluate the implementation of increased controls in NRC Regional materials programs and Agreement States in response to the Commission's approval of the Transition Plan through the Integrated Materials Performance Evaluation Program (IMPEP).

II. OBJECTIVES

- A. To supplement criteria and guidance found in NRC Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, and applicable Office of State and Tribal Programs (STP) State Agreements procedures.
- B. To expand IMPEP's existing common and non-common performance indicators to incorporate increased control requirements into the evaluation of an NRC Regional materials program's or Agreement State's adequacy and/or compatibility determination.
- C. To provide additional guidance to IMPEP team members for reviewing applicable performance indicators affected by the implementation of increased controls.

III. BACKGROUND

In an effort to increase the control of certain radioactive materials, the Commission approved an approach to implement increased controls for NRC and Agreement State licensees authorized to possess radioactive materials in quantities of concern. The increased controls for certain licensees are mandated under the NRC's statutory authority to protect public health and safety. The implementation of the increased controls will be carried out by NRC Regional materials programs and Agreement States for their licensees as an immediate mandatory matter of compatibility.

Pursuant to Section 274j(1) of the Atomic Energy Act (Act), as amended, the Commission holds the authority to periodically review the adequacy of a State's ability to protect public health and safety under its Agreement with the Commission. The Commission holds the same authority for review of the adequacy of the NRC Regional

materials programs to protect public health and safety. The NRC uses IMPEP to evaluate the adequacy of an NRC Regional materials program's or State's ability to protect public health and safety. For Agreement States, compatibility to NRC's program is also evaluated. IMPEP reviews are conducted in accordance with MD 5.6 and applicable STP procedures.

IV. RESPONSIBILITIES

A. Team Leader

The team leader for the Regional or Agreement State review will assign lead review responsibility for each of the applicable indicators. The principal reviewer should meet the appropriate requirements, as specified in MD 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members* or in other parts of this Temporary Instruction (TI). In addition to meeting the qualification requirements for the principal reviewer for Technical Quality of Inspections found in MD 5.10, the team member performing inspector accompaniments as part of the IMPEP review must have taken and passed the NRC Security Inspections Course or alternate training if accompanying an inspector on an inspection of a licensee subject to increased controls. Alternate training in this instance includes in-house training programs in an Agreement State or NRC Regional office.

B. Principal Reviewer

The principal reviewer is responsible for reviewing all assigned indicators in accordance with MD 5.6, applicable STP Procedures, and the additional guidance in this TI.

V. GUIDANCE

A. Technical Staffing and Training

1. In addition to the guidance found in STP Procedure SA-103, *Reviewing Common Performance Indicator #3, Technical Staffing and Training*, the reviewer should verify and document the following:
 - a. Agreement State or NRC Regional staff inspecting licensees subject to increased controls have passed the NRC Security Inspections Course or alternate training. Alternate training in this instance includes in-house training programs in an Agreement State or NRC Regional office. If an Agreement State or NRC Region chooses to provide an in-house training alternative to the NRC Security Inspections Course, the date and scope of the training should be documented and available for the on-site portion of the IMPEP review; and,

- b. Staff inspecting licensees subject to increased controls are qualified to independently inspect the applicable category of licensee.

B. Status of the Materials Inspection Program

- 1. In addition to the guidance found in STP Procedure SA-101, *Reviewing the Common Performance Indicator, Status of the Materials Inspection Program*, the reviewer should evaluate and document the following:
 - a. All licensees subject to increased controls are identified;
 - b. The Agreement State or NRC Regional materials program has developed and implemented a documented and auditable prioritization methodology for ranking licensees for inspections of increased controls that is consistent with the prioritization guidance developed by the NRC; and,
 - c. Inspections of licensees required to implement increased controls are timely with respect to established implementation dates for the requirements.
 - i. Higher-risk licensees identified through the prioritization, mentioned above, should be inspected within the first year after implementation of the requirements.
 - ii. All initial increased controls inspections should be completed within three years from the date of implementation of the controls.
 - iii. After initial inspections are completed, affected licensees should be inspected at intervals consistent with NRC Inspection Manual Chapter 2800 or the respective Agreement State equivalent.

C. Technical Quality of Inspections

- 1. In addition to the guidance found in STP Procedure SA-102, *Reviewing the Common Performance Indicator, Technical Quality of Inspections*, the reviewer should verify and document the following:
 - a. Increased controls were addressed in applicable inspections;
 - b. Licensee implementation of increased controls is documented in applicable inspection reports; and,
 - c. Sensitive licensee information maintained or possessed by the Agreement State or NRC Regional materials program and their licensees is properly controlled.

2. In addition to the guidance for inspector accompaniments of NRC Regional or Agreement State inspectors as part of an IMPEP review found in Section V.F. of STP Procedure SA-102, *Reviewing the Common Performance Indicator, Technical Quality of Inspections*, the principal reviewer of alternate team member should ensure that approximately 25 percent of the inspector accompaniments performed involve licensees subject to increased controls, if possible.

D. Technical Quality of Licensing Actions

1. In addition to the guidance found in STP Procedure SA-104, *Reviewing the Common Performance Indicator, Technical Quality of Licensing Actions*, the reviewer should evaluate and document the following:
 - a. All licensees meeting the criteria to implement increased controls have been identified, and a system is in place to readily identify new licensees that should be subject to increased controls; and,
 - b. Legally-binding requirements are imposed, as appropriate, and their incorporation into affected licenses was timely in accordance with the Transition Plan.

E. Technical Quality of Incident and Allegation Activities

1. The initial response and timeliness of reporting attempted thefts, actual thefts, and/or sabotage by the NRC Regional materials program or Agreement State should be evaluated based on the guidance in STP Procedure SA-105, *Reviewing Common Performance Indicator #5, Response to Incidents and Allegations*, and STP Procedure SA-300, *Reporting Materials Events*.

F. Compatibility Requirements

1. In addition to the guidance found in STP Procedure SA-107, *Reviewing the Non-Common Performance Indicator, Compatibility Requirements*, the reviewer should verify and document the following:
 - a. Rules or alternate legally-binding requirements have been developed and implemented;
 - b. Adoption or issuance was timely; and,
 - c. Rules or alternate legally-binding requirements have been submitted to the NRC for review.

G. Sealed Source and Device Evaluation Program

1. No additional guidance has been identified for this indicator at this time. The reviewer should perform the review based on the guidance in STP Procedure SA-108, *Reviewing the Non-Common Performance Indicator, Sealed Source and Device Evaluation Program*.

H. Low-Level Radioactive Waste Disposal Program

1. No additional guidance has been identified for this indicator at this time. The reviewer should perform the review based on the guidance in STP Procedure SA-109, *Reviewing the Non-Common Performance Indicator, Low-Level Radioactive Waste Disposal Program*.

I. Uranium Recovery Program

1. No additional guidance has been identified for this indicator at this time. The reviewer should perform the review based on the guidance in STP Procedure SA-109, *Reviewing the Non-Common Performance Indicator, Uranium Recovery Program*.

J. Regional Fuel Cycle Inspection Program

1. No additional guidance has been identified for this indicator at this time. The program under review should be evaluated based on the criteria for this indicator in MD 5.6.

K. Site Decommissioning Management Plan

1. No additional guidance has been identified for this indicator at this time. The program under review should be evaluated based on the criteria for this indicator in MD 5.6.

VI. APPENDICES

Reserved.

VII. REFERENCES

1. Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*.
2. Management Directive 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*.
3. STP Procedure SA-101, *Reviewing the Common Performance Indicator, Status of the Materials Inspection Program*.
4. STP Procedure SA-102, *Reviewing the Common Performance Indicator, Technical Quality of Inspections*.
5. STP Procedure SA-103, *Reviewing Common Performance Indicator #3, Technical Staffing and Training*.
6. STP Procedure SA-104, *Reviewing the Common Performance Indicator, Technical Quality of Licensing Actions*.
7. STP Procedure SA-105, *Reviewing Common Performance Indicator #5, Response to Incidents and Allegations*.
8. STP Procedure SA-107, *Reviewing Non-Common Performance Indicator #1, Legislation and Program Elements Required for Compatibility*.
9. STP Procedure SA-108, *Reviewing the Non-Common Performance Indicator, Sealed Source and Device Evaluation Program*
10. STP Procedure SA-109, *Reviewing the Non-Common Performance Indicator, Low-Level Radioactive Waste Disposal Program*.
11. STP Procedure SA-109, *Reviewing the Non-Common Performance Indicator, Uranium Recovery Program*.
12. STP Procedure SA-300, *Reporting Materials Events*.