

Comment Resolution Document

Summary of Comments Received on *SA-101, Reviewing Common Performance Indicator, Status of Materials Inspection Program*

I. Sent to the Agreement States, Non-Agreement States, and State Liaison Officers for Comment: STC-14-111, December 15, 2014

Comments Received:

- a. Organization of Agreement States Letter dated January 28, 2015
- b. State of Alabama Letter dated January 29, 2015

Organization of Agreement States (OAS):

Comment 1: General Comment: There are multiple places in the document that refer to the ability for Agreement States to develop an alternative reciprocity inspection policy. While the Board approves of allowing Agreement States this flexibility, the following questions should be addressed in the procedure:

- a. Is this an option for NRC regions or only Agreement States?
- b. What type of criteria will the IMPEP Teams use to determine if the Policy is acceptable?
- c. Using a similar risk-informed performance based approach as described in the procedure, is it permissible to develop and implement a policy that eliminates or substantially reduces the field site radiography licensees from the list of reciprocity candidates for inspections? Field site radiography is among the highest risk of the activities inspected by the National Materials Program. How far below the previous 20% criteria is acceptable?
- d. How will the NRC, MRB and IMPEP Teams maintain consistency in the National Materials Program in regard to this Alternative Policy?

Response: Comments noted. The flexibility of having an alternative policy existed in the original SA-101 procedure. The alternative policy is not new to this revision although the language associated with the alternative policy has been amplified. See II B. a. This applies only to Agreement States. NRC must follow policy in IMC 1220. b. See new Q&A in Appendix B which will address and provide guidance to this question. c. Eventually, IMC 1220, "Report of Proposed activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, and Offshore Waters," and Inspection of Agreement State Licensees Operating Under 10CFR150.20 will be revised. However, we are not able to address policy issues in the procedures. However, when the IMC 1220 is revised, the NRC will request comments from the Agreement States. By dictating the minimum standards of

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performance, the NRC would be effectively hindering the state's ability to produce their own independent program unique to their own goals and would effectively defeat the purpose of having allowing the state to adopt an alternative policy. For example, 1% in a state may a large number of licensees whereby in another state it may be a relatively few number of licensees. d. The optional policy was created at the behest of the states who advocated it to suit their state especially when it came to the commuting distances associated with licensees in remote areas.

Comment 2: Page 1, Item II.B, last sentence: change "in lieu of" to "in addition to"

Response: Comment not incorporated. The alternative policy for reciprocity inspections is an option not an additional burden of performing both IMC 1220 and the alternative policy. Changing the wording would lead the reader into believing that they had to do both.

Comment 3: Page 3, Section IV.B.5: change "Attends" to " Participates in" and delete the statement made in parenthesis

Response: Comment partially incorporated. Changed the wording to reflect participating in the IMPEP but retained that wording in parenthesis to clarify that teleconferencing was an acceptable alternative to participating in person.

Comment 4: Page 4, Section V.B.1: delete the part of the second sentence beginning with "and should ...". This is not needed as the first sentence says "during the entire review period".

Response: Comment not incorporated. We believe the clarifying language is appropriate.

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Comment 5: Page 5, item b. ii, uses the term 'should' to describe the method for selecting inspection casework. Is this a requirement for the principal reviewer or guidance?

Response: Thank you for the comment. The word 'should' gives the reviewer flexibility in determining which attributes to evaluate rather than using a binding word such as 'shall'. This is guidance and word 'should' provides latitude to the reviewer.

Comment 6: Page 8, Section V.B.9 and V.C.4: Add "Agreement" before "State".

Response: Comment incorporated.

Comment 7: Page 9, item D uses the term should instead of shall. Is the Principal Reviewer required to evaluate each of the 10 items in the section?

Response: Thank you for the comment. The word 'should' gives the reviewer flexibility in determining which attributes to evaluate rather than using a binding word such as 'shall'. The reviewer is not required to evaluate all ten items as they may not all be available.

Comment 8: Page 10, item 9 mentions that the principal reviewer should evaluate the protocol employed by the NRC Region or the Agreement State to reduce inspection intervals based on licensee performance. What type of protocol is the Principal Reviewer required to use when conducting this evaluation? Why is this necessary? What is the intent? By eliminating the terms extend and frequencies, it may not be clear if reducing inspection intervals means less inspections or more often.

Response: Comment noted. Step has been revised to add the words "shorten the time between inspections". The previous version of IMC 2800 allowed extensions.

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The current version does not allow extensions. The ability to extend an inspection is no longer an option. Therefore, the word 'extend' was removed from the revised version of SA-101.

Comment 9: Appendix B, Questions 5 and 6: Add "Agreement" before "State".

Response: Comment Incorporated.

State of Alabama:

Comment 1: This document includes text that refers to the ability for Agreement States to develop an alternative reciprocity inspection policy. While we agree that Agreement States should be given maximum flexibility in designing their programs to cope with issues unique to each state, we believe that the minimum performance metrics should be made clear. This allows the states maximum flexibility while meeting the same performance goals nationwide. The new text used in this document seems to leave out any minimum performance standards. By doing this, you do not provide IMPEP teams a set of performance metrics so they can maintain a consistent level of expectations when reviewing programs.

Response: Thank you for the input. By dictating the minimum standards of performance, the NRC would be effectively hindering the state's ability to produce their own program unique to their own goals and would effectively defeat the purpose of having an alternative policy. The NRC did not create anything new with the alternative policy. However, in this revision we have provided guidance in the form of a Q&A in Appendix B.

Comment 2: On page 5, in section b. ii, change to read, "The principal reviewer should perform a risk-informed sample of the program's inspections based on the significant issues of radiation safety and physical protection of byproduct radioactive material. Using the term security is problematic in some states in that they are only charged with radiation safety for the public and occupational worker. While maintaining licensed material from unauthorized access or removal is a safety issue, using the term security can be construed as requiring the

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program to delve into the responsibilities of Public Safety Departments and law enforcement agencies.

Response: Thank you for your input. We don't see the word 'security' as problematic. Security is part of the Agreement State Program under health and safety. Security was also implemented in Part 37 and under 'Increased Controls'.

II. Sent to the U.S. Nuclear Regulatory Commission Offices for Comment by Memorandum dated December 15, 2014

Comments Received:

- a. U.S. Regulatory Commission, Region I, Division of Nuclear Materials Safety; email dated January 16, 2015
- b. U.S. Regulatory Commission, Region III, Division of Nuclear Materials Safety; email dated January 5, 2015

U.S. Regulatory Commission, Region I, Division of Nuclear Materials Safety; email dated January 16, 2015

Comment 1: On page 5 of 10, Item 2.b.: Insert the word "initial". "...Priority 1,2,3, **initial** and candidate reciprocity inspection records,..."

Response: Comment noted. However, the recommended revision is incorrect. For initial inspections, all priority 1 through 5 need to be inspected not just priority 1 through 3. The procedure has been revised to denote that.

Comment 2: Renumber pages, There is a page 11 of 10, There is a page 12 of 10

Response: Thank you for the input. The page numbering will be corrected in final editing.

Comment 3: Section V.C (Page 8 of 10): The review guidelines discuss Priority 1, 2, and 3 licensees and reciprocity licensee but does not address initial inspections. Specifically, item #'s 4 & 5. Question: Should there be a statement about review of initial inspections?

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Response: Comment not incorporated. This is a parenthetical statement. It is not providing specific guidance...it is an example.

Comment 4: Appendix A, Item #3: "Multiple overdue inspections for the same license are counted as a single event." Question: What if the same licensee has more than one license?

Response: Comment noted. Overdue inspections are evaluated per license not per licensee. The procedure step has been revised to denote that.

U.S. Regulatory Commission, Region III, Division of Nuclear Materials Safety; email dated January 5, 2015

Comment 1: Sections II.E, V.B.5 and V.E.8. Add a provision for inspection reports to be issued in 45 calendar days for team inspections, as detailed in IMC 0610. IMC 0610 defines a team inspection as one involving three or more inspectors, and for actions involving an enforcement conference or escalated enforcement.

Response: Comment not incorporated. It is not the intent of this procedure to reiterate all the requirements in IMC 0610.

Comment 2: Section V.B.8. Change "principle" to "principal"

Response: Comment Incorporated

Comment 3: Section VI. Change "APPENDIXES" to "APPENDICES"

Response: Comment Incorporated