

TRANSITION PLAN:

INITIATIVES FOR INCREASING STATE PARTICIPATION IN THE CONTROL OF SOURCES

INTRODUCTION

The staff, in coordination with the Organization of Agreement States, Inc. (OAS) Executive Board and the NRC Office of the General Counsel, has developed a transition plan which could be implemented, should the Commission approve the alternative approach to increase Agreement State involvement in control of sources. In response to the SRM for COMSECY-05-0015, on June 30, 2005, the staff sent a letter (RCPD-05-009) to each of the Agreement States asking several questions concerning their ability and willingness to issue, inspect, and enforce legally binding requirements that implement additional controls over radioactive sources for Groups 1-4 licensees. The staff also conducted a conference call with the Agreement State Radiation Control Program Directors or their designees on June 30, 2005 to explore the approach and to answer questions. In addition, the Chair of the OAS sent a letter to each of the Agreement States expressing support for this initiative and encouraging each of the States to respond in the requested time-frame. The NRC Executive Director for Operations also sent a letter (RCPD-05-011) to each Agreement State Radiation Control Program Director emphasizing the efforts of NRC and OAS, and encouraged prompt responses in the face of a national holiday. The staff has worked with each of the Agreement States in an effort to understand specific situations in each State.

AGREEMENT STATE RESPONSES

The staff has received information that all of the Agreement States, with one exception (see discussion below), are able and willing to issue, inspect, and enforce legally binding requirements that enhance controls for radioactive sources. While many Agreement States have multiple methods of implementation (i.e., license conditions, emergency rules, and emergency Orders), the preferred approach among most of the Agreement States would be to accomplish implementation through the use of legally binding license conditions. All Agreement States believe that the staff's proposed basis and compatibility recommendation in the Order would provide a basis for State issuance. However, final determination of acceptance of the basis in some States will be subject to further review. The New York State Department of Labor (NYDOL), one of the three affected agencies in New York, has expressed "serious doubts about whether it can legally impose some of the required measures (e.g. controlling sensitive information [generated by licensees]) as well as to whether the additional resources required to perform inspections against these measures (as per NRC estimates in the transition plan) will be available." The other affected agencies in New York State have not expressed the same doubt. Other States raise similar issues about resource constraints. NYDOL further indicated that "it is likely that some major revisions in the control measures would have to be made before NYDOL could impose them through license condition." The summary of the

responses received from each of the Agreement States and the individual Agreement States responses are attached (Attachment 1).

All of the Agreement States have the ability and authority to accomplish issuance of legally binding requirements for all licensees in Groups 1-4 within 90 days of receipt of the measures from the NRC. Most of the Agreement States could accomplish issuance within 30 days of receipt of the measures from the NRC. The 90 day time-frame for issuance under the alternative approach would be similar to the proposed schedule for issuance under the current implementation approach presented to the Commission in COMSECY-04-0045. The approved additional controls could be mailed out simultaneously for Groups 1-4 within 30 days of approval. However, the staff proposes under either the current or alternative approach, that the Commission separately issue Orders to each group of licensees (NRC licensees only under the alternative approach), over the course of three months. The staff believes that Orders for Group 1 licensees should be issued within 30 days of Commission approval, and issuance of the remainder would be staggered over a two month time period. This is due to the large number of licensees and the resources required to mail the documents and respond to individual licensee inquiries.

Several States expressed concerns with respect to guidance for licensees, timing for inspections, inspection procedures, and training. These concerns are addressed in the discussion below.

ISSUANCE OF LEGALLY BINDING REQUIREMENTS UNDER THE ALTERNATIVE APPROACH

The staff has analyzed how the elements contained in the proposed protective measures for licensees in Groups 1-4, provided to the Commission in COMSECY-05-0019, could be issued under an alternative approach. As discussed above, the Agreement States indicated that they have multiple methods available to meet the implementation time-frame desired by the Commission. These methods include legally binding license conditions, Orders, or emergency rulemaking. The staff believes that the most effective and efficient method for issuance by NRC would be through issuance of Orders to NRC's licensees based on NRC's public health and safety authority. Such Orders would also provide an articulated basis and rationale for Agreement States to issue essentially identical requirements through equivalent State legally binding requirements (see discussion below). This method would also involve the least amount of effort, given the substantial amount of effort reflected in the proposed Order and controls provided in COMSECY-05-0019.

The staff has drafted and revised the implementation documentation that would be necessary under the alternative approach. This documentation includes: letter to licensees, the Order for NRC licensees, proposed increased controls, implementing guidance along with the Questions and Answers, and Communication Plan. The revised documentation is provided in

Attachment 2. The Order is based on ensuring adequate control of material to protect public health and safety and also reflects that the recipients of the Order would only be NRC licensees.

The additional controls proposed in COMSECY-05-0019 are essentially unchanged. However, the introductory language to each of the elements has been changed to reflect the public health and safety basis. In COMSECY-05-0019, the staff proposed that the additional controls and supporting documentation be publically available. On July 18, 2005, the OAS sent a letter to the NRC in support of this recommendation (ML052010613). The staff also proposed that licensees be ordered to protect the detailed information generated in response to the additional requirements. The staff has added this requirement as a sixth control, and made appropriate changes to the supporting documentation. This change will maximize efficiency in nationwide implementation by providing each of the expected requirements within the same document. In addition, several of the proposed additional controls in COM Secy-05-0019 have notification requirements that the licensee notify the NRC and the Agreement State as “promptly as possible.” To address this area, staff has revised these controls to require reporting to NRC or the Agreement State. Staff would also rely on the notification requirements already in place for Agreement States in STP Procedure SA-300: “Reporting Material Events.” This procedure has requirements, which are a mandatory matter of compatibility, and include notifications for thefts and possible acts of terrorism.

Although similar in some ways to existing control measures issued under the NRC’s authority to protect the common defense and security, this Order and additional controls would be issued under the NRC’s statutory authority to protect public health and safety. The NRC has always considered proper control of radioactive sources to be vital to public health and safety. A licensee’s loss of control of high-risk radioactive sources has a potential to result in significant adverse health effects through unintentional or unauthorized exposure. In addition, failure to properly protect licensee-generated information has the potential to result in a licensee’s loss of control of radioactive material and therefore poses a similar risk to public health and safety.

Several States commented that NRC’s basis for issuing the increased controls under public health and safety would assist the Agreement States in developing and issuing legally binding requirements to implement the additional controls for licensees under their regulatory jurisdiction. Specifically, the States indicated that language which indicates that the requirements are needed to supplement existing requirements in 10 CFR 20.1801 and 20.1802 to minimize danger to the public health and safety would provide the States with a basis that would assist in their implementation of the requirements. The staff has reflected these comments in the proposed revisions to the Order. Several States commented that NRC should provide suggested language which could be used by the States in a legally binding license condition. Staff believes that the current controls could be implemented with minimal modification by the Agreement States, through the use of a license condition requiring the additional controls, or use of a “tie-down” license condition referring to either NRC’s Order, or the additional controls specifically.

Several States commented that if the Commission approved this approach, they would support the NRC notifying all licensees that the Agreement States will be implementing the additional controls for Agreement State licensees under their public health and safety regulatory responsibilities as an immediate mandatory matter of compatibility. For new Agreement States (e.g. Minnesota) the NRC Order would convey with the NRC license transferred to the State. If the Commission approves the alternative approach, staff would work with Minnesota staff to discuss inspection requirements and training for Minnesota inspectors.

INSPECTION AND ENFORCEMENT OF LEGALLY BINDING REQUIREMENTS BY NRC AND AGREEMENT STATES

The staff will develop, in coordination with the Agreement States, inspection procedures for the inspection of additional controls for each group of licensees, regardless of the implementation approach. Staff would issue the inspection procedures within 90 days of issuance of the new requirements. If the Commission approves the approach and approves the currently-proposed six month time-frame for licensees to be in full compliance, initial inspections would commence within six months of the date of issuance of the new requirements. Given the responses from the States, some States may be able to complete the initial inspections in a shorter time-frame than the three year inspection time-frame presented in the resources section in COMSECY-05-0015. The NRC would have fewer licensees (approximately 550) to inspect, and the inspection responsibility of NRC and the 33 Agreement States for the majority of licensees could be accomplished during routine health and safety inspections. For the purpose of preparing budget estimates, NRC assumed average incremental inspection efforts reflected in the following table would be required to verify effectiveness in implementation of the additional controls.

Category	On-Site Direct Inspection	Pre-Inspection Preparation	Post-Inspection Documentation
Group 1 Licensees (NRC and Agreement States)	4 to 8 hours	2 hours	4 hours
Group 2 Licensees (NRC and Agreement States)	4 to 8 hours	2 hours	4 hours
Group 3 Master Materials Licensees (NRC)	16 hours	8 hours	8 hours
Group 3 Broad Scope Licensees (NRC and Agreement States)	2 to 12 hours	2 hours	4 hours

Group 4 Licensees	4 to 8 hours	2 hours	4 hours
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The staff has indicated in discussions with the Agreement States that the time-frame for completion of inspections would be no less than one year from the date that licensees are expected to be in full compliance, but no greater than three years. Some of the Agreement States expressed concern about completing initial inspections within one year from the date that licensees are required to be fully compliant with the new requirements. In many cases, completing initial inspections within one year would involve a re-prioritization of State resources. The State responses indicate that initial inspections could be completed within 2 years. To minimize the impact on State and NRC resources, the staff recommends that the States and NRC have 3 years to complete initial inspections. The time-frame will help ensure that most of the inspections can be conducted as a part of routine health and safety inspections, minimizing the need for special inspections. As discussed in COMSECY-05-0019, the staff will develop, in conjunction with a working group for enhanced controls, a “smart audit” questionnaire for use by NRC staff in prioritizing NRC inspections. The questionnaire will be shared with the Agreement States for their consideration in prioritizing State inspections. The staff will also work with the Agreement States to develop an inspection frequency for future inspections and integrate the inspection procedure into routine health and safety inspection procedures in Inspection Manual Chapter 2800.

The staff has also developed a roll-out plan to issue and inspect the Orders under the alternative approach. The roll-out plan, with a comparison to the schedule for the current implementation approach set out in COMSECY-04-0045, is contained in Attachment 3. If the Commission approves the alternative approach, the staff will integrate the roll-out plan into the communication plan.

In discussions with the Agreement States and the OAS Executive Board, the staff and the States discussed the benefit of having a working group convene during the time period of the conduct of initial inspections, to review findings and provide input to NRC and Agreement States to ensure consistency in implementation. As a part of this working group, bi-monthly teleconferences with NRC and State officials would be conducted in order to provide an avenue to discuss findings and issues to help ensure consistency in the nationwide implementation. The IMPEP procedures will also be revised and the next round of evaluations will assess program implementation (see NRC Oversight, below).

The staff recommends that enforcement be carried out according to existing Agreement State and NRC enforcement procedures. Similar to NRC’s treatment of large irradiators and manufacturers and distributors, the staff will develop and share an enforcement policy for use by NRC. The staff will share the enforcement policy with the Agreement States for their consideration.

TRAINING FOR NRC AND AGREEMENT STATE INSPECTORS AND SUPERVISORS

The Agreement States identified concerns with the content, length, and availability of training for inspectors and supervisors for conducting inspections of licensees in Groups 1-4. Currently, there are training courses scheduled for September and October 2005. These courses were originally developed for the inspection of large irradiators and manufacturers and distributors under common defense and security. Topic areas that are covered are physical security, personnel security, handling and protection of safeguards information, and enforcement/allegations procedures. Staff believes that the content of these courses would need to be revised and/or compressed to focus on the additional controls for radioactive material for licensees in Groups 1-4. In addition, these training requirements would need to be incorporated into NRC and State inspector training and qualification programs. This would also provide greater flexibility for use of alternative training methods, such as on-the-job training.

Under the current implementation approach, for those States that have executed Section 274i Agreements, NRC is paying State FTE costs during the training, in addition to funding the cost of the course, and NRC also pays travel and per diem expenses for State attendees. For those States that choose to attend the training, but have not executed Section 274i Agreements, NRC is funding the cost of the course, and State staff travel and per diem costs. Staff recommends that under the alternative approach, the NRC continue to fund the course and State staff travel and per diem costs during the initial two years following issuance, to help ensure consistency in NRC and State inspections, knowledge, and practice. Funds will need to be increased for training of anticipated increased State inspector participation. Cost savings from the decreased NRC funded inspections of Groups 1-4 licensees and projected number of Section 274i Agreements will more than offset these training costs.

Because all States will be participating, and the number of personnel attending the course will increase, staff recommends that the frequency of the course be increased for the six month time-frame following issuance of the controls. The frequency of the course would need to be re-evaluated, based on the needs of NRC and State staff, at a future date.

AGREEMENT STATE COMPATIBILITY

The staff believes that implementation of the increased controls should be an immediate mandatory Compatibility Category "B" matter of compatibility for the Agreement States. This would ensure timely and adequate increased controls are put in place through legally binding requirements nationwide.

NRC OVERSIGHT

Staff will develop revisions to IMPEP procedures to include the alternative approach by December 30, 2005. Staff also considered the possibility that there may be a case where an individual Agreement State may not be able to meet a commitment to implement in the time-frame indicated in the State's response. If such a situation were to arise, the staff would follow the already established IMPEP procedures.

FUTURE ACTIONS

A rulemaking working group would need to be established to codify the additional controls for licensees in Groups 1-4 into the regulations. Schedules for these and other rulemakings will be developed, prioritized, and presented to the Commission through the Planning, Budget, and Performance Management processes.

CONCLUSION

The alternative approach is a viable approach that will increase State participation in the oversight of control of radioactive materials without compromising the Commission's exclusive common defense and security authority under the Atomic Energy Act. This approach maximizes the effectiveness and efficiency of NRC and Agreement State inspection resources and reduce travel costs, because safety and control requirements would be inspected in an integrated manner during routine health and safety inspections, consistent with the NRC's strategic goals. If the Commission approves this alternative approach, the staff is prepared to implement the actions discussed in this transition plan.

Attachments:

1. Summary of All Agreement State Responses and Individual Agreement State Responses
2. Letter to Licensees, Order for NRC Licensees, Proposed Increased Controls, Implementing Guidance with the Questions and Answers, and Communication Plan
3. Roll-Out Plan