

March 28, 2006

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA/*
Executive Director for Operations

SUBJECT: MARCH 2006 QUARTERLY UPDATE: INCREASED CONTROL
OF SOURCES

On August 15, 2005, the Commission directed the staff in a Staff Requirements Memorandum (SRM) to implement the actions in COMSECY-05-0028, "Staff Response to SRM for COMSECY-05-0015: Initiatives for Increasing Agreement State Participation in the Control of Sources." In order to keep the Commission fully and currently informed during the initial implementation of the increased controls, the staff has provided updates to the Commission through EDO Daily Notes, the Office of Nuclear Security and Incident Response Monthly Significant Security Activities Update, and a Technical Assistants briefing. The staff provided the first quarterly report to the Commission, consistent with the SRM for COMSECY-05-0028 on December 22, 2005. This quarterly report provided a timeline of all actions completed to date on this effort, and this format is being used for subsequent quarterly reports.

The staff notes that Minnesota will become the 34th Agreement State on March 31, 2006. The staff has worked and continues to work closely with Minnesota staff to ensure a smooth transition of regulatory authority over all areas covered by the Section 274b Agreement. The staff understands that Minnesota plans to issue NRC-approved increased controls to affected licensees on March 31, 2006. Once the staff receives final confirmation that the Minnesota licensees have been issued the increased controls, the staff will relax the NRC issued Order EA-05-090, imposing increased controls on these licensees.

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During the last quarter several activities related to the increased controls were completed, and the more significant accomplishments are noted below. The status of all actions completed to date are provided in the Enclosure.

- The staff finalized and submitted for publication the temporary instruction for the inspection of increased controls.
- The staff finalized revisions to the Integrated Materials Performance Evaluation Program to reflect increased controls.
- The staff established a working group to ensure regulatory consistency, by reviewing and dispositioning implementation issues identified by the NRC staff, the Agreement State Radiation Control Programs and licensees. The working group meets weekly, and additional questions and answers developed by the group have been posted on the NRC web site.
- The staff also completed a training needs analysis for FY 2006 and FY 2007. The staff determined that the training courses currently budgeted for FY 2006 and FY 2007 should ensure an adequate number of both NRC and Agreement State personnel receive the necessary training to be able to conduct inspections, in a time-frame consistent with the Commission direction in the SRM for COMSECY-05-0028.
- The staff initiated bi-weekly teleconferences with the Agreement States and Regional Offices on implementation issues of mutual interest.

Licensee implementation and compliance will be verified through the conduct of inspections. All licensees issued the increased controls outlined in Order EA-05-090 that possess quantities of concern, must be in compliance within six months from the date of issuance. Starting in March 2006, and continuing through the upcoming quarter, the large majority of licensees issued the increased controls will be required to be in full compliance, and inspections will commence, unless the licensee was granted relief from the timeliness requirement. Inspections can begin as soon as licensees report full compliance, but in any case will begin no later than six months after the date of issuance of the increased controls.

The NRC staff and the Agreement States continue to track licensee implementation of the increased controls and continue to follow up with the affected licensees to ensure adequate responses to the increased control requirements are received. In many cases, licensees have requested that the authorized possession limits on their licenses be reduced below the quantities of concern, or have identified that they do not possess radioactive materials in quantities outlined in the Order, and therefore do not need to implement the increased control requirements. For licensees implementing the increased controls, the NRC and Agreement State staff are establishing inspection schedules for the higher risk licensees that need to be inspected within the first year of implementation, based on the prioritization methodology.

Information provided by the Agreement States, and NRC staff indicates that, as of March 23, 2006, approximately 96 percent of NRC and Agreement State licensees issued increased controls have responded to the requirements. The staff estimates that approximately 1,700 of the 2,900 NRC and Agreement State licensees issued the increased controls will be implementing the requirements, and thus need to be inspected. The Agreement States and

NRC staff continue to follow up with licensees who have not yet responded, through e-mail and telephone contacts. In cases where licensees fail to provide a response to the increased control requirements following these additional contacts, the NRC and Agreement State staff are considering various actions to ensure affected licensees are aware of, and implement the increased controls. For example, licensees may be issued a notice of violation, and/or may be determined to present a "higher risk" and need to be inspected within the first year after implementation.

The staff expects that the following activities will occur during the upcoming quarters:

- The Implementation of Increased Controls Working Group will revise its charter to include addressing inspection and enforcement issues.
- An NRC regional branch chief workshop will be held at Headquarters the week of April 3, 2006, to address increased controls planning issues, including the scheduling of inspections.
- The "Materials Control and Security Systems and Principles" course will be transitioned from management by the Office of Nuclear Material Safety and Safeguards (NMSS) to the Technical Training Center beginning in FY 2007.

Enclosure:

As stated

cc: SECY
OGC
OCA
OPA
CFO

TIMELINE FOR THE ISSUANCE OF THE INCREASED CONTROLS

August 15, 2005:

- Commission issued the Staff Requirements Memorandum for COMSECY-05-0028.

September 2, 2005:

- The staff issued a letter to the Agreement States which provided expectations for issuance of the requirements, reporting on licensee implementation, and conduct of inspections.
- The Office of the Secretary dispatched letters from the U.S. Nuclear Regulatory Commission (NRC) Chairman to Agreement State Governors, Congressional Oversight Committees, and Federal Agencies (Department of Homeland Security, Department of Energy, National Nuclear Security Administration).

September 6, 2005:

- The Organization of Agreement States, Inc. provided a letter of support to all Agreement States, along with a generic license condition which was approved by the staff. The license condition was used by the large majority of the Agreement States to issue the increased controls.
- The staff dispatched a copy of the NRC Chairman's letters to the Agreement State Governors to the State Liaison Officers and Radiation Control Program Directors.
- The staff also notified Congressional Offices, international counterparts, and key Federal Staff at Department of Homeland Security, Domestic Nuclear Detection Office, Department of Energy, National Nuclear Security Administration, and the Office of the Vice President.
- The Office of Public Affairs also issued a press release.

September 7, 2005:

- The staff dispatched a letter to NRC and Agreement States licensees to provide notification that the additional requirements are being issued under public health and safety authority, and Agreement States will be implementing the increased controls via Order or other immediate effective mechanism for licensees within their jurisdiction.

September 30, 2005:

- The staff provided the Commission with a prioritization methodology to inspect higher risk licensees within the first year of implementation.

November 4, 2005:

- The staff dispatched the prioritization methodology to the Agreement States.

November 14, 2005:

- The NRC issued the increased controls to approximately 500 NRC licensees.
- The staff notified State Homeland Security Advisors of the increased controls and the implementation approach.

November 23, 2005:

- The staff issued a draft temporary instruction for inspecting against licensee implementation of the increased controls for NRC staff and Agreement State comment.

December 1, 2005:

- The NRC Order was published in the *Federal Register*.

December 2, 2005:

- The Agreement States completed issuance of the increased controls to approximately 1,700 licensees in accordance with the Commission's established time-frames.
- All of the Agreement States imposed either a legally binding license condition requiring implementation of the increased controls, or issued Orders and a corresponding license condition to implement the increased controls.

December 5, 2005:

- The Office of Public Affairs issued a press release which announced that the increased controls had been issued over the three month time period and provided links to the public for the NRC's increased controls.
- The staff provided the press release to all Radiation Control Program Directors, State Liaison Officers, international counterparts, and Congressional oversight committees.

December 7, 2005:

- The staff provided a copy of the 12/5/2005 press release to the State Transportation Contacts.
- The staff provided the Agreement States an opportunity to comment on draft revisions to the Integrated Materials Performance Evaluation Program to reflect implementation of the increased controls.

December 22, 2005:

- As a result of the staff's confirmatory review of licensees potentially subject to the increased controls Order, the staff issued the increased controls to an additional 635 NRC licensees that met the criteria for receiving the Order, but were not included in the November 14, 2005, mailing.

January 26, 2006:

- The staff convened the initial meeting of a working group composed of NRC managers and representatives of the Organization of Agreement States, Inc., and the Conference of Radiation Control Program Directors, Inc. This working group was established to ensure regulatory consistency by reviewing and dispositioning implementation issues identified by the NRC staff, the Agreement State Radiation Control Programs and licensees. The working group meets weekly, and additional questions and answers developed by the group have been posted on the NRC web site.

February 16, 2006:

- The NRC drafted and distributed standard violations for the increased controls which are currently undergoing NRC legal review and review by the Office of Enforcement. When these internal reviews are complete, the standard violations will be finalized and subsequently distributed to each of the Agreement State programs and NRC Regional Offices.

February 22, 2006:

- The staff completed a needs analysis for attendance in the NRC sponsored "Materials Control and Security Systems and Principles" course in FY 2006 and FY 2007. The staff determined that the training courses currently budgeted for FY 2006 and FY 2007 should ensure an adequate number of both NRC and Agreement State personnel receive the necessary training to be able to conduct inspections in a time-frame consistent with the Commission direction in the SRM for COMSECY-05-0028.
- As called for in the transition plan for the increased control of sources, and in order to enhance communications with each of the Agreement States on the implementation of the increased controls, bi-weekly teleconferences have been initiated to provide a forum for each of the Agreement States and NRC Regional Offices to be kept abreast of implementation issues of mutual interest.

March 20, 2006:

- The staff finalized and submitted for publication the temporary instruction for the inspection of increased controls.

March 27, 2006

- The staff finalized revisions to the Integrated Materials Performance Evaluation Program to reflect increased controls.

March 31, 2006:

- Minnesota plans to issue NRC-approved increased controls to affected licensees.