

January 9, 2007

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

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

SUBJECT: DECEMBER 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." To keep the Commission fully and currently informed during the initial implementation of the increased controls (IC), 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," a Technical Assistants' briefing, and Commission memoranda. This memorandum provides a quarterly update on the status of ongoing U.S. Nuclear Regulatory Commission (NRC) and Agreement State activities relative to the IC, along with a chronology of events regarding the IC efforts to date. This December 2006 update addresses current implementation, training, guidance, and communication efforts in regard to the IC. The staff's last quarterly update was dated September 28, 2006.

#### Implementation

The Agreement State programs continue to be actively involved with the IC implementation process. During various ongoing communications, such as the IC teleconferences and other miscellaneous contact, the Agreement States have not indicated any delays in the completion of scheduled IC inspections. This has been verified through the Integrated Materials Performance Evaluation Program (IMPEP) reviews. Those Agreement States that have been evaluated since the inspection phase began in June 2006, are on schedule for the first-year inspections; many are ahead of schedule. In addition, it appears that the Agreement States are appropriately resolving potential non-compliance issues of the IC identified during materials inspections. The Agreement States have demonstrated a proactive approach to the implementation and inspection of the IC. The NRC Regions also are on schedule to complete the first-year inspections and expect efforts to continue as planned.

CONTACT: Joshua A. Palotay, FSME/DMSSA  
301-415-6231

### Training

Two sessions of the “Materials Control and Security Systems and Principles Training Course,” commonly referred to as “the IC Course,” were offered in October and November of 2006. The course focuses on security-related issues and the implementation and inspection of the IC requirements. The two sessions were hosted at Sandia National Laboratories (SNL) in Albuquerque, New Mexico, and taught by NRC, Agreement State, and SNL personnel. The October and November sessions represented all the budgeted training allocations for fiscal year (FY) 2007 and were also the final sessions in which NRC would fund Agreement State attendees.

Before issuance of the IC, the “Materials Control and Security Systems and Principles Training Course” focused on the security requirements of the Orders issued to panoramic and underwater irradiators, and manufacturer and distributor licensees. The course material therein paralleled that which was to become the IC Course. Beginning in September 2005, the security course was modified to focus primarily on the IC. Since February 2004, NRC has presented 11 such courses and funded the training of 301 individuals (217 Agreement State staff members and 84 NRC employees). Those in attendance also included 10 staff members from various Master Materials Licensees and two members of the New York Police Department. However, they were funded by their respective agencies. Currently, the NRC Technical Training Center (TTC) is planning two IC courses in FY 2008 and two in FY 2009; exact dates have not been established. The Agreement States have expressed interest in hosting the course rather than it being hosted at a Federal facility such as the TTC or SNL. NRC staff is considering this proposal.

In addition to the formal IC Courses, NRC staff conducted a high-level, one-day IC overview at the Annual Organization of Agreement States (OAS) Meeting on September 25, 2006, as described in the September 2006 quarterly update. The overview provided a broad summary of the IC requirements and physical protection concepts to Agreement State managers who have been unable to attend the IC Course. OAS reported that 75 individuals attended the session. The former Office of State and Tribal Programs offered to fund 10 Agreement State managers, who could not otherwise attend a formal IC Course, to attend the overview. The funds were made available only for purposes of attending the overview and did not include an allotment to attend the entire OAS meeting. Of the 10 allotments made available, nine Agreement State managers requested funding.

The bulk of the initial training needs for both Agreement States and NRC Regions appear to have been met, based on interactions with Agreement State and NRC Regional staff. Personnel from each Agreement State and NRC Region responsible for IC inspections have attended the training. However, some Agreement States have noted a need to train additional staff. NRC staff recognizes that, due to ongoing issues of new licensees, re-staffing, employee turnover as regulatory agencies evolve, and the addition of new Agreement States, there will continue to be a need for formal IC training courses in the future.

### Guidance

NRC reorganized in October 2006. As a result, the Implementation of Increased Controls Working Group (IICWG) is in the process of being reconfigured to appropriately align with new

Office, Division, and Branch structures. This included a revision to the IICWG charter to reflect these changes. The general organization and processes have remained the same; however, there have been some changes in representation because of new job functions outside the IICWG. Though these changes are currently underway, the IICWG continues to be staffed by the necessary NRC Headquarters, NRC Region, and Agreement State staffs to fulfill its objectives.

The IICWG continues to receive a steady flow of issues for clarification and requests for additional guidance. However, many of these requests are satisfied without the need for issuance of new guidance. The IICWG has issued several items of guidance since its first meeting on January 26, 2006. Guidance is typically issued in the form of Question and Answer (Q&A), whereby an implementation or compliance question is submitted and the IICWG supplies an answer. The IC implementation guidance provided with the IC Order, issued November 14, 2005, contained 201 individual Q&As. The IICWG has issued 16 supplemental Q&As since its formation. Currently, there are other Q&As under review and being considered for approval. In addition to Q&A guidance, the IICWG has formulated other individual guidance documents on specific issues. These documents are available to Agreement State and NRC staff through the secure IC Toolbox web site, as described in previous updates.

On September 28, 2006, NRC issued an Enforcement Guidance Memorandum (EGM 06-003). This EGM was developed with the consideration of a licensee's "good faith attempt" to implement the IC. The EGM provides guidance to NRC and Agreement State regulators in determining the disposition or severity of an IC-related potential violation, in light of a licensee's attempt to meet the requirements. However, the "good faith" consideration can only be taken into account by inspectors during a licensee's first IC inspection, where the licensee may have misinterpreted the requirements. The EGM includes a supplemental document of standard violations. The supplement provides examples of violations, in each of the four severity levels, as guidance in determining the appropriate severity level for violations against the IC. Based on this guidance, it appears that the majority of potential violations discovered by NRC and Agreement State inspectors during initial inspection have been categorized as a good faith attempt on the part of the licensee to comply with the IC.

Members of the NRC Region and Agreement State staff have noticed a trend of non-compliance issues among licensees regarding certain aspects of the IC, which have resulted in potential violations. In general, NRC and Agreement State inspectors have found that licensees are willing and able to comply with the IC but may misinterpret the requirements. In reaction to this finding, the IICWG is preparing an Information Notice to identify these common areas that need further clarification, in an attempt to enhance communication and awareness, in order to reduce the occurrence of these specific issues.

### Communications

Communication with, and among, the Agreement State agencies continues to be facilitated through IC monthly teleconferences and the secure IC Toolbox web site. As discussed in the September update, participants of the teleconference have agreed to use the IC Toolbox and its e-mail mailing list for registered users as the primary means for certain routine information updates and communications regarding the IC. Currently, there are 395 Agreement State and NRC staff members registered as users of the web site. NRC staff continues to reevaluate

methods and potential tools for maximizing the efficiency of communication efforts with, and among, the Agreement States regarding security-related issues.

During this quarter, the following activities related to the IC were completed. (The status of all completed actions to date is provided in the enclosure.)

- Current information indicates that the Agreement States have adequately addressed implementation of the IC. This has been confirmed in various Agreement States through IMPEP reviews.
- Two sessions of the “Materials Control and Security Systems and Principles Training Course” were conducted in October and November for FY 2007. These represented the final sessions of this course funded by NRC for Agreement State participation.
- A high-level overview for managers of the IC was conducted at the Annual OAS meeting in September.
- NRC enforcement guidance was issued regarding IC inspection findings, which included examples of standard violations for severity level determinations.

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

- IC inspections will continue in both the Agreement States and NRC Regions.
- The IICWG will formulate an Information Notice to address reoccurring non-compliance issues.
- NRC staff will continue to work with TTC in determining a schedule for the FY 2008 and 2009 IC Courses.
- The IICWG membership will complete its transition according to the NRC reorganization.
- NRC will issue a template license condition that will be used to apply the IC to a specific license by referring to the IC Order. This will apply to new applicants and licensees amending their licenses for the inclusion of radioactive material quantities of concern.

Enclosure:  
Timeline for the Issuance of the  
Increased Controls

cc: SECY  
OGC  
OCA  
OPA  
CFO

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cc: SECY  
 OGC  
 OCA  
 OPA  
 CFO

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 DMSSA r/f EDO r/f RidsSecyCorrespondenceMailCenter  
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OFFICE	DMSSA/SSSB	DMSSA/SSSB:BC	OGC	FSME/DMSSA:D	TechEd	FSME:D	EDO
NAME	JAPalotay:gd:kk	TEHarris	FXCameron	JRSchlueter	EKraus	CLMiller	LAReyes
DATE	12/06/06	12/07/06	12/14/06	12/15/06	12/19/06	12/21/06	01/09/07

## **TIMELINE FOR THE ISSUANCE OF THE INCREASED CONTROLS**

### August 15, 2005

- Commission issued the Staff Requirements Memorandum (SRM) 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 (i.e., the 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 that the staff approved. A large majority of the Agreement States used the license condition to issue the increased controls.
- The staff dispatched a copy of the NRC Chairman's letters to the Agreement State Governors, State Liaison Officers, and Radiation Control Program Directors.
- The staff also notified Congressional Offices, international counterparts, and key federal staff at the 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.

Enclosure

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

- 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 announcing that the increased controls had been issued over the three-month time period and provided links to the public regarding 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 with 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 positioning 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

- 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 Training 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 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 issued NRC-approved increased controls to affected licensees.

April 2006

- Increased controls inspections began in several Agreement States.

April 4, 2006

- The staff completed an NRC Regional Branch Chief workshop, to address increased controls planning and implementation issues, including the scheduling of inspections.

June 1, 2006

- The Implementation of Increased Controls Working Group (IICWG) revised its charter to include addressing issues in the inspection phase of the overall implementation.

June 20, 2006

- The staff completed the development of an Increased Controls toolbox and message board on a secure server accessed on the Office of State and Tribal Programs web site, to allow States and Regional Offices to communicate and discuss information applicable to the increased controls.

July 2006

- All NRC Regional offices and Agreement States began conducting inspections for licensee compliance with the increased controls.

August 2006

- The contract for the "Materials Control and Security Systems and Principles Training Course" was transferred from Sandia National Laboratory in

Albuquerque, New Mexico, to the Technical Training Center (TTC) in Chattanooga, Tennessee. The TTC contract will be effective as of October 1, 2006; however, the Sandia campus will continue to host the course for the fiscal year (FY) 2007 sessions.

September 28, 2006

- NRC issues an Enforcement Guidance Memorandum regarding a licensee's "good faith attempt" to implement the increased controls Orders. This included a supplemental document of standard violations for determining the severity level of potential violations regarding the increased controls.

October 2006

- The IICWG begins transitioning membership based on the NRC reorganization that resulted in the Office of Federal and State Materials and Environmental Management Programs.

November 2006

- The final "Materials Control and Security Systems and Principles Training Course" for FY 2007 was held at Sandia National Laboratory in Albuquerque, New Mexico. This marks the last of the NRC-funded increased controls courses for the Agreement State staff.