

March 23, 2007

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

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

SUBJECT: MARCH 2007 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. Specifically, this update addresses current implementation, training, guidance, and communication efforts in regard to the IC. The staff's last quarterly update was dated January 9, 2007.

Implementation

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

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Training

The initial training needs for both Agreement States and NRC Regions were 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. NRC staff recognizes that, due to ongoing issues of new licensees, hiring of new staff, employee turnover, and the addition of new Agreement States, there will continue to be a need for formal IC training courses in the future. The Agreement States have expressed interest in hosting the course, rather than it being hosted at a Federal facility such as the NRC Technical Training Center (TTC) or Sandia National Laboratory. NRC staff is considering this proposal. The courses allocated for Fiscal Year (FY) 2007 occurred in October and November 2006. Budgeted courses have been planned for FY 2008 and FY 2009; the specific dates for the FY 2008 training will be set as we get closer to the new FY.

Guidance

The Implementation of Increased Controls Working Group (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 26 supplemental Q&As since its formation. The Q&As were written in such a way as to provide licensees with examples of how to apply the IC in situations where an acceptable solution may not be plainly recognized. These specific documents are available on the NRC public web site, and to Agreement State and NRC staff through the secure IC Toolbox web site, as described in previous updates.

During this last quarter, the IICWG has observed a decrease in the number of submitted issues needing clarification and requests for additional guidance. As a result, the IICWG has adjusted the frequency of its meetings from once a week, to every other week. However, the IICWG is prepared to increase its meeting frequency, should the need arise.

On December 21, 2006, the NRC issued pre-licensing guidance and a checklist that will be inserted into NUREG-1556, Volume 20, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Administrative Licensing Procedures," as Appendix C "Checklist to Ensure That Radioactive Materials Will Be Used As Intended" (ML063480221). A Management Directive 5.3 Working Group, composed of NRC and Agreement State representatives, developed the pre-licensing guidance to modify the process of issuing a specific license. The Regions and Agreement States began a pilot of the draft guidance during the Spring of 2006, which concluded prior to the issuing date of December 21, 2006.

The guidance is specifically related to the NRC's response to the U. S. Government Accountability Office (GAO) Report, entitled, "Nuclear Security Federal and State Action Needed to Improve Security of Sealed Radioactive Sources" (August 2003; GAO-03804). Recommendation 3 of the GAO report states, "Modify NRC's process of issuing specific licenses to ensure that sealed sources cannot be purchased before NRC's verification—through inspection or other means—that the materials will be used as intended." The checklist and

implementation guidance modified the licensing process to provide the mechanism for the reviewer and cognizant supervisor to request an evaluation of a potential security risk. The checklist modifies the process of issuing a specific license to ensure that applicants, including those who may be subject to increased controls, will not be approved until the NRC or an Agreement State has determined with reasonable assurance that the requested materials will be used as intended. It also requires a license reviewer to notify the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME), Division of Materials Safety and State Agreements (DMSSA), Source Safety and Security Branch (SSSB), of a request for a specific license for a type of use that is under a Security Order, or subject to the additional requirements for IC.

In supplement to the checklist, NRC issued a "Guide for Applying the Additional Requirements for Increased Controls" (ML063470434) on February 9, 2007. It contains information on how to determine whether the IC are required, and text used by NRC for preparing a license transmittal letter. In addition, it contains the text, or a "template," for the license condition which requires licensees to implement the IC. It should be noted that the text for the license condition, found in the document mentioned above, is specific to NRC licensees. However, it is consistent with the license condition used by the Agreement States as set forth in the letter "Effective Date of Increased Controls for Applicants and for Licensees Seeking Authorization for Quantities of Concern (RCDP-06-007)," dated March 13, 2006 (ML060720417).

The IICWG has observed that some requirements of the IC are either being misinterpreted or incompletely implemented by licensees. This may be partially due to the change in traditional, and well understood, health and safety practices to include a specific emphasis on security, which requires licensees to adjust their methods of operation. In response to this observation, members of the IICWG are preparing an Information Notice (IN) to point out areas of the IC which commonly need clarification and highlight the IC guidance documents available to licensees. Increased awareness by licensees on how to locate and use these guidance documents may help reduce common deficiencies identified during inspections. The NRC believes that many of the deficiencies discovered during initial inspections of licensees' IC programs could be avoided by a licensee thoroughly examining the IC Implementing Guidance, the associated Q&As, and Supplemental Q&A documents. The IN will include a list of these guidance documents, and the specific web address and instructions to locate the documents. The IN is in the final stages of development; issuance is expected during the next quarter.

NRC plans to issue a Regulatory Issue Summary (RIS), resulting from a question to the IICWG regarding licensed material collocated in or on vehicles and trailers during domestic highway and rail transportation activities. Licensees have inquired whether the placement of additional physical barriers during transportation activities is acceptable to prevent licensed material from being collocated; and thus, avoid the need to implement all or some of the IC. The IICWG determined that radioactive material and devices containing radioactive materials are automatically considered collocated during transportation activities. Therefore, the unity sum of all radioactive material and devices in or on a vehicle and/or trailer must be considered in determining whether the aggregate quantity (activity) exceeds Table 1 values of the Order Imposing Increased Controls (EA-05-090). Staff expect the RIS to be issued during the next quarter.

The IICWG plans to form a sub-group which will look into the development of new guidance for subsequent inspections of the IC. This guidance would potentially be incorporated into the NRC Inspection Manual to specifically address the IC requirements as part of the routine inspection process. This guidance would replace the Temporary Instruction which is set to expire after March 2008.

Communications

Communication with, and among, the Agreement State agencies is now facilitated predominantly through the secure IC Toolbox web site. As discussed in the September update, participants of the teleconference have agreed to use the IC Toolbox secure web site, and its e-mail mailing list of registered users, as the primary means for certain routine information updates and communications regarding the IC. Currently, there are over 400 Agreement State and NRC staff registered as users of the web site. However, Agreement State letters, or other formal communications, are issued when necessitated by a significant development (e.g., issuance of the "Checklist to Ensure That Radioactive Materials Will Be Used As Intended").

The use of the IC Monthly Teleconferences by Agreement States for discussing IC issues has significantly decreased. During this last quarter, few to no agenda items were formally submitted for discussion. As a result, the consensus of the IC Teleconference participants was to hold the meeting on an as-needed basis, pending the submission of issues for discussion to the teleconference coordinator. The last regularly-scheduled teleconference was January 4, 2007. However, as the need arises, IC matters are discussed during the routine monthly call with all 50 States.

Summary

The following IC-related activities were completed during this quarter (the status of all completed actions to date is provided in the enclosure):

- NRC's Regions are on schedule to complete the first-year IC inspections. Current information indicates that implementation of the IC have been adequately addressed by the Agreement States. This has been confirmed in various Agreement States though IMPEP reviews.
- The NRC issued pre-licensing guidance and a checklist that will be inserted into NUREG-1556, Volume 20, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Administrative Licensing Procedures," as Appendix C "Checklist to Ensure That Radioactive Materials Will Be Used As Intended."
- The NRC issued a template license condition, included in the "Guide for Applying the Additional Requirements for Increased Controls," 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 license for the inclusion of radioactive material quantities of concern.

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 NRC will issue an IN to address reoccurring non-compliance issues.
- The NRC will issue a RIS on the collocation of radioactive material during transportation activities.
- NRC staff will continue to work with TTC in determining a schedule for the FY 2008 and FY 2009 IC courses.
- An IICWG sub-group will be formed to develop guidance for subsequent IC inspections.

Enclosure:
Timeline for the Issuance of the
Increased Controls

cc: SECY
OGC
OCA
OPA
CFO

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 OGC
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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 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

- 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.

December 21, 2006

- Issued pre-licensing guidance and checklist that will be inserted into NUREG-1556, Volume 20, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Administrative Licensing Procedures," as Appendix C "Checklist to Ensure That Radioactive Materials Will Be Used As Intended."

February 9, 2007

- Issued "Guide for Applying the Additional Requirements for Increased Controls," containing information on how to determine whether the Increased Controls are required, text used by NRC for preparing a license transmittal letter, and text, or a "template," for the license condition which requires licensees to implement the Increased Controls.