

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF FEDERAL AND STATE MATERIALS AND
ENVIRONMENTAL MANAGEMENT PROGRAMS
WASHINGTON, D.C. 20555

June 5, 2007

**NRC REGULATORY ISSUE SUMMARY 2007-15
UNESCORTED ACCESS TO MATERIALS FOR
NON-MANUFACTURER AND DISTRIBUTOR SERVICE PROVIDERS**

ADDRESSEES

All U.S. Nuclear Regulatory Commission (NRC) licensees that are non-manufacturer and distributor (non-M&D) service providers. All Agreement State Radiation Control Program Directors and State Liaison Officers.

INTENT

The NRC is issuing this regulatory issue summary (RIS) to inform addressees that NRC will offer the opportunity for non-M&D service providers to request an Order imposing the trustworthy and reliability and fingerprinting requirements that manufacturer and distributor (M&D) service provider licensees must currently meet for unescorted access to radioactive material quantities of concern. It is anticipated that Orders will be issued in Fall 2007, to licensees that request an Order. No specific action or written response is required.

BACKGROUND

Subsequent to the terrorist events of September 11, 2001, the NRC issued immediately effective security Orders to certain M&D licensees to implement Additional Security Measures (ASMs) for certain radioactive materials to supplement the existing regulatory security requirements. NRC issued these orders to NRC and Agreement State licensees under NRC's authority to protect the common defense and security of the nation. M&D's were issued Orders to implement ASMs that included trustworthy and reliability requirements.

In 2005, NRC and the Agreement States issued Increased Control (IC) Orders or other legally binding requirements to licensees to control access to licensed radioactive materials to protect the public health and safety. IC requirement 1.c. requires that service providers be escorted unless determined to be trustworthy and reliable pursuant to a background investigation as an employee of a M&D licensee. As a result, currently only M&D service providers may be granted unescorted access to risk significant sources even though non-M&D service providers provide similar services and have the same intimate knowledge of risk significant sources and devices as M&D service providers.

On March 12, 2007, the Commission directed staff to issue, upon request, trustworthy and reliability and fingerprinting requirements to non-M&D service providers that may want unescorted access at a customer's facility. Enclosure 2 contains Staff Requirements Memorandum SECY-07-0011, directing the development of trustworthy and reliability and fingerprinting requirements.

ML071500071

SUMMARY OF ISSUE

IC requirement 1.c. requires that service providers be escorted unless determined to be trustworthy and reliable pursuant to a background investigation as an employee of a M&D licensee. Since M&D licensees implementing the ASMs can make the trustworthy and reliability determination for individuals that provide a service at their customer's facility, they were not required to go through the customer's process for determining trustworthy and reliability for granting unescorted access. The IC provision required all other vendor and non-M&D service providers to be escorted by a person from the customer's facility, who is authorized to have unescorted access to certain radioactive material in quantities of concern. Enclosure 1 identifies these radionuclides and their quantities of concern.

To maintain appropriate access control to radioactive materials and address any inequity between M&D and non-M&D service providers' ability to access a customer's facility, NRC will issue Orders to non-M&D service providers upon request. This will allow non-M&D service providers unescorted access to radioactive material quantities of concern while performing service at a site for a licensee that is implementing the IC requirements. The Order to non-M&D service providers will impose trustworthy and reliability and fingerprinting requirements that are equivalent to the requirements for M&D service providers, who perform services requiring unescorted access to material. NRC will issue this Order to non-M&D service providers that specifically request that NRC issue it to them. The Agreement States will issue similar requirements through Orders or other legally binding requirements to Agreement State licensees who specifically request them.

The Order will contain requirements similar to IC 1, and IC 5, and will require individuals granted unescorted access to be fingerprinted and have a Federal Bureau of Investigation (FBI) identification and criminal history records check. The IC requirements are:

- IC 1.a.: the licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.
- IC 1.b.: individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

- IC 1.d.: the licensee is to document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.
- IC 5.a.: the licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.
- IC 5.b.: each time the licensee revises the list of approved persons required by 1.d., the licensee shall retain the previous documentation for three years after the revision.

Once a non-M&D service provider has received and implemented all the trustworthy and reliability and fingerprint requirements of the Order, they may provide service without an escort, if authorized by the IC licensee. Similar to the process for customers of M&D service providers, licensees must obtain some type of written communication from a non-M&D service provider, which includes the name of the employee providing service and a statement that the employee has been determined trustworthy and reliability in accordance with the NRC Order for non-M&D service providers.

If you are a non-M&D service provider and you want unescorted access to radioactive material quantities of concern at a customer's facility, please notify the technical contact listed in this RIS.

BACKFIT DISCUSSION

This RIS requires no action or written response. Any action on the part of addressees in accordance with the guidance contained in this RIS is strictly voluntary and, therefore, is not a backfit under any regulatory requirement in 10 CFR. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because this RIS is informational, and does not represent a departure from current regulatory requirements.

PAPERWORK REDUCTION ACT STATEMENT

This RIS contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collections were approved by the Office of Management and Budget (OMB), approval numbers 3150-0001; 3150-0007; 3150-0009; 3150-0010; 3150-0015; 3150-0016; 3150-0020; 3150-0029; 3150-0130; and 3150-0158.

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. *et seq*) and, therefore, is not subject to the Act.

CONTACT

This RIS requires no specific action or written response. If you have any questions, please contact the technical contact listed below or the appropriate regional office.

/RA/

Janet R. Schlueter, Director
Division of Materials Safety
and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Technical Contact: Nima Ashkeboussi, FSME
(301) 415-7637
Email: naa@nrc.gov

Enclosures:

1. Radionuclides of Concern
2. SRM-SECY-07-0011
3. List of Recently Issued Generic Communications

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OFC	FSME:SSSB	FSME:SSSB	FSME:MSEA	FSME:MSSA
NAME	NAshkeboussi	THarris	AMcIntosh	SMoore
DATE	5 / 14 /07	5 / 15 /07	5 / 15 /07	5 / 16 /07
OFC	OGC-CRA	OGC - NLO	OIS	NSIR:DSP
NAME	MBarkman for TRothschild	TCampbell for JGoldberg	MJanney	MShaffer
DATE	5 / 30 /07	5 / 17 /07	5 / 23 /07	5 / 23 /07
OFC	FSME:MSSA			
NAME	JSchlueter			
DATE	6 / 5 /07			

Radionuclides of Concern

Radionuclide	Quantity of Concern1 (TBq)	Quantity of Concern2 (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above ³	See Footnote Below ⁴	

¹ The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

² The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

³ Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

⁴ If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n , $\mathbf{A}_{(i,n)}$, to the quantity of concern for radionuclide n , $\mathbf{Q}_{(n)}$, listed for that radionuclide equals or exceeds one. $[(\text{aggregated source activity for radionuclide A}) \div (\text{quantity of concern for radionuclide A})] + [(\text{aggregated source activity for radionuclide B}) \div (\text{quantity of concern for radionuclide B})] + \text{etc.} \dots \geq 1$

March 12, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - SECY-07-0011 - INTERIM
IMPLEMENTATION OF FINGERPRINTING REQUIREMENTS IN
SECTION 652 OF THE ENERGY POLICY ACT OF 2005

The Commission has approved the staff's plan to issue orders imposing fingerprinting requirements for individuals with unescorted access to radioactive material possessed by Security Order Licensees which includes licensees who (1) are licensed for a spent fuel storage facility, fuel cycle facility, or decommissioning reactor; or (2) possess and ship spent nuclear fuel. (Recommendation 1) These orders should serve as an interim step while the rule to require fingerprinting is developed and finalized.

The Commission has approved the staff's recommendation to issue a generic communication to NRC and Agreement State Increase Control requirement recipients and known non-manufacturer and distributor service providers. (Recommendation 4) The generic communication should be prepared in close coordination with the Agreement States, to ensure there is a full and common understanding of the path forward among the affected programs and that potentially affected licensees in the States promptly receive the generic communication. Subsequently, the staff should issue impose on non-manufacturer and distributor service provider licensees that prefer unescorted access the same trustworthiness and reliability requirements and fingerprinting requirements that manufacturer and distributor service provider licensees must currently meet for unescorted access. The staff should develop a more formal method to identify non-manufacturer and distributor service providers that have the same intimate knowledge of risk-significant sources as manufacturer and distributor providers.

The Commission has disapproved the staff's proposal to not impose fingerprinting requirements by order on licensees required to implement increased controls while the staff develops the rulemaking. (Recommendation 2) The staff should expeditiously engage the Agreement States to develop a plan to require fingerprinting for this group of licensees under public health and safety, with a goal of issuing the requirements as enhancements to the Increased Controls within six months. The staff should keep the Commission fully informed of the progress and any significant difficulties.

The Commission has disapproved the staff's proposal to issue an immediately effective rule to exempt research, and test reactor (RTR) licensees from fingerprinting requirements while the staff develops a second rulemaking to define "unescorted access" as it would apply to RTR licensees. (Recommendation 3) Instead, the staff should expeditiously develop a definition of "unescorted access" that would apply to RTR licensees and issue orders to RTR licensees to require fingerprinting for individuals that fall within this definition. To ensure compliance with Section 104c. of the Atomic Energy Act to impose only the minimum amount of regulation needed for RTR licensees, the orders should require fingerprinting only for individuals with

unescorted access to risk-significant areas or materials within the facilities. The staff should then proceed with the rulemaking to determine if additional personnel should be fingerprinted.

For future Commission papers involving State issues, the staff should address States' views in the coordination section of the paper either by noting the Organization of Agreement States and/or Conference of Radiation Control Program Directors views or describing the interactions, if any, that have taken place. In a small number of cases information cannot be shared with the states before it is provided to the Commission for deliberation. In these cases a brief statement as to why it was not coordinated with the states would be appropriate.

The Commission has no objection to sharing this SRM with Agreement States and affected licensees with appropriate controls.

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA

Recently Issued FSME/NMSS Generic Communications

Date	GC No.	Subject	Addressees
02/02/07	IN-07-03	Reportable Medical Events Involving Patients Receiving Dosages of Sodium Iodide Iodine-131 less than the Prescribed Dosage Because of Capsules Remaining in Vials after Administration	All U.S. Nuclear Regulatory Commission medical use licensees and NRC Master Materials Licensees. All Agreement State Radiation Control Program Directors and State Liaison Officers.
02/28/07	IN-07-08	Potential Vulnerabilities of Time-reliant Computer-based Systems Due to Change in Daylight Saving Time Dates	All U. S. Nuclear Regulatory Commission licensees and all Agreement State Radiation Control Program Directors and State Liaison Officers.
03/15/07	IN-07-10	Yttrium-90 Theraspheres [®] and Sirspheres [®] Impurities	All U.S. Nuclear Regulatory Commission (NRC) Medical Licensees and NRC Master Materials Licensees. All Agreement State Radiation Control Program Directors and State Liaison Officers.
04/04/07	IN-07-13	Use of As-Found Conditions to Evaluate Criticality-related Process Upsets at Fuel Cycle Facilities	All licensees authorized to possess a critical mass of special nuclear material.
03/01/07	RIS-07-03	Ionizing Radiation Warning Symbol	All U.S. Nuclear Regulatory Commission licensees and certificate holders. All Radiation Control Program Directors and State Liaison Officers
03/09/07	RIS-07-04	Personally Identifiable Information Submitted to the U.S. Nuclear Regulatory Commission	All holders of operating licenses for nuclear power reactors and holders of and applicants for certificates for reactor designs. All licensees, certificate holders, applicants, and other entities subject to regulation by the U.S. Nuclear Regulatory Commission (NRC) of the use of source, byproduct, and special nuclear material
03/20/07	RIS-07-05	Status and Plans for Implementation of NRC Regulatory Authority for Certain Naturally-occurring and Accelerator-produced Radioactive Material	All NRC materials licensees, Radiation Control Program Directors, State Liaison Officers, and NRC's Advisory Committee on the Medical Uses of Isotopes

Date	GC No.	Subject	Addressees
04/05/07	RIS-07-07	Clarification of Increased Controls for Licensees That Possess Collocated Radioactive Material During Transportation Activities	All U.S. Nuclear Regulatory Commission (NRC) licensees issued NRC's Order Imposing Increased Controls and all Radiation Control Program Directors and State Liaison Officers

Note: A full listing of generic communications may be viewed at the NRC public website at the following address: <http://www.nrc.gov/Electronic Reading Room/Document Collections/Generic Communications>.