

June 29, 2007

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

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

SUBJECT: JUNE 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 Executive Director for Operations Daily Notes, the Office of Nuclear Security and Incident Response "Monthly Significant Security Activities Update," a Technical Assistants' (TA) 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 March 23, 2007.

#### Implementation

The NRC Regions and Agreement States have completed the first-year IC inspections as planned. Their performance is being verified through the routine Integrated Materials Performance Evaluation Program (IMPEP) reviews. Those Agreement States which have been evaluated since the inspection phase commenced in June 2006, were on schedule; many were ahead of schedule.

The Agreement State programs continue to be actively involved with the IC implementation process. Agreement States have not indicated any significant problems in the completion of scheduled IC inspections. In addition, the Agreement States have demonstrated a proactive approach to the implementation and inspection of the IC, and are appropriately resolving potential noncompliance issues identified during inspections.

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### Training

The initial training needs for both Agreement States and NRC Regions were met by courses offered in 2005 and 2006. Personnel responsible for IC inspections have attended the training from each Agreement State and NRC Region. NRC staff recognizes that there will continue to be a need for formal IC training courses in the future. In addition to the two courses allocated for Fiscal Year (FY) 2007 and held in October and November 2006, a third course will be presented in August 2007. Additional training courses are requested in the FY 2008 budget and will be requested in FY 2009. The specific dates for the FY 2008 training are under negotiation.

The Agreement States of Florida, Ohio and Texas 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 a proposal to hold one of the 2008 courses in the State of Florida. Agreement States have also expressed interest in a "train the trainer" approach.

### Guidance

The Implementation of Increased Controls Working Group (IICWG) has issued guidance typically in the form of Question and Answer (Q&A), whereby an implementation or compliance question is submitted and the IICWG supplies an answer. While the IICWG did not issue any Q&As during the past quarter, it anticipates issuing at least one Q&A during the next quarter.

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

In May, the IICWG formed a subgroup to develop guidance for the second year and subsequent inspections of the IC. It is expected that this guidance will be based upon the existing guidance, and will be incorporated into the NRC Inspection Manual to specifically address the IC requirements as part of the routine materials health and safety inspection process. This guidance will replace the Temporary Instruction which is set to expire after March 2008. The subgroup is currently meeting by teleconference every other week.

As described in previous updates, the IICWG has observed that some requirements of the IC are either being misinterpreted or incompletely implemented by licensees. In response to this observation, members of the IICWG prepared and NRC staff issued on May 2, 2007, Information Notice (IN) 2007-16, "Common Violations of the Increased Controls Requirements and Related Guidance Documents," to point out areas of the IC which commonly are involved in deficiencies identified during inspections.

NRC staff issued Regulatory Issue Summary (RIS) 2007-07, "Clarification of Increased Controls for Licensees That Possess Collocated Radioactive Material During Transportation Activities," on April 5, 2007, regarding licensed material collocated in or on vehicles and trailers during domestic highway and rail transportation activities. Licensees had 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 all radioactive material and devices in or on a vehicle and/or trailer are considered to be collocated. Copies of RIS 2007-07 were provided to the Agreement States, and a copy is posted on the NRC web site in the Electronic Reading Room.

### Fingerprinting

During the past quarter, the IICWG moved to address the implementation of fingerprinting requirements under the requirements of section 652 of the Energy Policy Act of 2005. Section 652 requires, in part, the fingerprinting of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission and determined by the Commission to be of such significance to the public health and safety or the common defense and security. In SRM-SECY-07-0011, the Commission determined that radioactive materials for which the Commission has previously decided to impose "increased controls" are materials of such significance.

Initially, the IICWG discussed forming a subgroup to address the implementation. However, the IICWG concurred that the fingerprinting requirements should be addressed by a separate Increased Controls Fingerprinting Working Group formed under Management Directive 5.3 with State representatives on both the working group and the steering committee. This working group is developing requirements in response to SRM-SECY-07-0011. The working group started in April 2007, and currently is moving expeditiously to issue fingerprinting requirements. A briefing of the Commissioners' Assistants on the status and implementation issues is being planned.

There are three Agreement State representatives on the working group. To aid the working group, a steering committee consisting of four NRC and two Agreement State managers was formed under Part IV of the Handbook attached to NRC's Management Directive 5.3, "Agreement State Participation in Working Groups."

The working group and steering committee have met and discussed topics including the legal authority of the Agreement States to require fingerprints and criminal history checks, who approves the licensee's reviewing official, Federal Bureau of Investigations (FBI) concerns with a State radiation control program director submitting fingerprints directly to the FBI, and adjudication criteria for criminal history results.

### Communications

The secure IC Toolbox web site continues to be the predominant method of communicating with the Agreement States on IC issues. As discussed in the September 2006 quarterly 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 more than 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 RIS 2007-07).

The use of the IC monthly teleconferences by Agreement States has been discontinued due to the lack of IC issues. However, in the future, IC matters will be discussed during teleconferences to be scheduled as needed.

In the SRM to COMSECY-05-0028, the Commission directed staff to inform the Commission on a quarterly basis of the status of actions completed to date on IC implementation effort. The SRM authorized the staff to extend the duration between the reports when all licensees have reported completion of the implementation of the requirements. Based on the results of the first year IC inspections, and the imminent implementation of additional requirements for fingerprinting, staff will continue to provide quarterly reports until it has been confirmed through inspection that all licensees are implementing the IC.

### 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 Regions completed the first-year IC inspections. The Agreement States have also completed their first year IC inspections. This continues to be confirmed through the routine IMPEP reviews.
- The NRC staff issued RIS 2007-07, "Clarification of Increased Controls for Licensees That Possess Collocated Radioactive Material During Transportation Activities."
- The IICWG formed a subgroup to address guidance on future IC inspections.
- A working group and steering committee were established under Management Directive 5.3 to address fingerprinting requirements for IC licensees.
- The NRC staff issued an IN 2007-16, "Common Violations of the Increased Controls Requirements and Related Guidance Documents."

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

- IC inspections of lower priority licensees will continue in both the Agreement States and NRC Regions.
- The NRC will issue guidance on second year and subsequent routine reinspection of IC licensees.
- The NRC will issue Orders imposing fingerprinting requirements on IC licensees.
- NRC staff will continue to work with TTC in determining a schedule for the FY 2008 and FY 2009 IC courses.

- Staff will continue to inform the Commission quarterly of the status of actions to implement the IC requirements, including fingerprinting.
- Staff will hold one additional training session for FY 2007 in August.

Enclosure:  
Timeline for the Issuance of the  
Increased Controls

cc: SECY  
OGC  
OCA  
OPA  
CFO

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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 (DHS), Department of Energy (DOE), National Nuclear Security Administration (NNSA)).

### 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 Increase Controls (IC).
- 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 DHS, Domestic Nuclear Detection Office, DOE, NNSA, and the Office of the Vice President.
- The Office of Public Affairs (OPA) 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 IC 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.

Enclosure

November 4, 2005

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

November 14, 2005

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

November 23, 2005

- The staff issued a draft Temporary Instruction for inspecting against licensee implementation of the IC 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 IC 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 IC, or issued Orders and a corresponding license condition, to implement the IC.

December 5, 2005

- OPA issued a press release announcing that the IC had been issued over the 3-month time period and provided links to the public regarding NRC's IC.
- 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 December 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 (IMPEP), to reflect implementation of the IC.



December 22, 2005

- As a result of the staff's confirmatory review of licensees potentially subject to the IC Order, the staff issued the IC 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 IC, 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 Fiscal Year (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 IC of sources, and to enhance communications with each of the Agreement States on the implementation of the IC, 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 IC.

March 27, 2006

- The staff finalized revisions to the IMPEP to reflect IC.

March 31, 2006

- Minnesota issued NRC-approved IC to affected licensees.

April 2006

- IC inspections began in several Agreement States.

April 4, 2006

- The staff completed an NRC Regional Branch Chief workshop, to address IC 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 IC 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 IC.

July 2006

- All NRC Regional Offices and Agreement States began conducting inspections for licensee compliance with the IC.

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 FY 2007 sessions.

September 28, 2006

- NRC issues an Enforcement Guidance Memorandum regarding a licensee's "good faith attempt" to implement the IC Orders. This included a supplemental

document of standard violations for determining the severity level of potential violations regarding the IC.

#### 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 IC 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 IC," containing information on how to determine whether the IC 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 IC.

#### March 2007

- IICWG extends the interval between meetings to two weeks, based on the reduced number of requests for guidance.

#### April 2007

- A Management Directive 5.3 working group and steering committee are formed to address fingerprinting requirements for IC licensees. As required by SRM-COMSECY-07-0011, the working group is scheduled to complete work in time for the fingerprint requirements to be issued to IC licensees in September 2007.

#### April 5, 2007

- NRC staff issued Regulatory Issue Summary 2007-07, "Clarification of IC for Licensees That Possess Collocated Radioactive Material During Transportation Activities."

May 2007

- IICWG forms a subgroup to develop guidance for second year and subsequent inspections.

May 2, 2007

- NRC issues Information Notice 2007-16, "Common Violations of the IC Requirements and Related Guidance Documents."